Statement following consultation on a new PSA Code of Practice (Code 15)

20 October 2021

PSA

Phone-paid Services Authority

Contents

Chairman's Foreword

Regulation of phone-paid services has been based on a Code for over 30 years. There have been no less than 14 versions in that time, providing a framework for guiding the behaviours and practices of the industry. The PSA exists to protect consumers – and we believe that a healthy market backed by clear regulation with providers conforming to best practice is the best protection that there can be.

Too often in the past we have addressed issues after they have occurred rather than being able to prevent harm in the first place. So in 2019 we set out our intention to regulate the phone-paid services market differently and embarked on a radical review of our regulatory framework. While outcomes-based regulation had served us well for more than a decade, that review has led to the new approach set out in this 15th Code. Our new Code of Practice will:

- raise standards in the market, by introducing ten clearly defined standards in place of outcomes.
- prevent harm and allows us proactive protection of consumers by placing increased focus on verification and introducing supervision. We intend to work with those operating in the market to address issues before they cause harm. We want to build in compliance and best practice.
- be simpler to comply with. The new Code removes much of the complexity associated with the old Code and is intentionally simpler and more accessible.
- allow for smarter enforcement, so that issues can be addressed in the most efficient and effective way.

This approach will benefit consumers as they can have confidence that standards throughout the market will be high and will match those in other markets. Industry will have a clearer Code, proactive engagement from the regulator and a commitment from us to resolve issues quickly.

I would like to thank the many people in the industry, consumer groups, and others for the collaborative effort to produce this Code. And my thanks go to the team at the PSA for delivering this ambitious, transformational Code.

The last few months have seen the very positive results from our regulatory changes to address harms in recent years. There has been a huge decrease in complaints to the PSA following the steps we have taken. My hope is that going forward we will see that continue, supported by the forward-looking new Code and we will see a market with very high standards of compliance, with all the benefits this brings to the industry and to consumers.

We shall implement the new Code by April 2022. We are committed to working with consumers and the industry to ensure smooth transition and to see that the benefits of the new Code are fully realized.

David Edmonds CBE

About the PSA

We are the UK regulator for content, goods and services charged to a phone bill. We act in the interests of consumers.

Phone-paid services are the goods and services that can be bought by charging the cost to the phone bill or pre-pay account. They include charity donations by text, music streaming, broadcast competitions, directory enquiries, voting on TV talent shows and in-app purchases. In law, phone-paid services are referred to as premium rate services (PRS).

We build consumer trust in phone-paid services and ensure they are well-served through supporting a healthy market that is innovative and competitive. We do this by:

- establishing standards for the phone-paid services industry
- verifying and supervising organisations and services operating in the market
- gathering intelligence about the market and individual services
- engaging closely with all stakeholders
- enforcing our Code of Practice
- delivering organisational excellence.

Executive summary

Background

This review of the Code is the first comprehensive one in more than a decade. The current Code of Practice (14th edition) (Code 14) has been in force since July 2016. However, it has evolved largely from the 12th Code of Practice (Code 12), which was introduced after our last comprehensive review of regulation in 2011.

The market we now regulate is fundamentally different to what it was ten years ago. When we first introduced outcomes-based regulation under Code 12, mobile-based services accounted for roughly 40% of market revenues. Consumers spent over £200 million on directory enquiries services and smartphone penetration was less than 50% of the population. Mobile-based revenues have now accounted for more than 80% of revenues for the past four years in a row, a trend which is also set to continue in 2021/22.

Consumer expectations have also changed, influenced by experiences in other markets and changes in legislation. It is time for us to ensure our regulation is up to date and fit for purpose to regulate today's and tomorrow's market.

We want to deliver a new Code 15 that:

- introduces Standards in place of outcomes
- focuses on the prevention of harm rather than cure
- is simpler and easier to comply with.

Code 15 also needs to be underpinned by efficient and effective enforcement.

This document sets out our final decision. For each of our proposals we set out the feedback we received during the consultation period and based on this feedback, our final decision. We also include our assessment of the impact of the proposed changes against a set of general principles. These are: effectiveness, balance, fairness, proportionality and transparency.

Our final decisions

Regulatory Standards and Requirements

Under Code 15, we have decided to introduce seven consumer-focused Standards and three organisational Standards. These are:

Consumer-focused:

- integrity
- transparency
- fairness
- customer care
- vulnerable consumers
- consumer privacy
- prevention of harm and offence.

Organisational:

- organisation and service information
- DDRAC
- systems.

Each Standard sets out the expected level of quality that relevant providers must achieve in relation to the provision of phone-paid services. These Standards will cover the provision, content, promotion and marketing of phone-paid services and will be enforceable on their own. Each Standard is supported by a set of more detailed Requirements.

In light of stakeholder comments received, we are confirming our regulatory approach with regard to moving to a new regulatory model based on Standards and Requirements. We also confirm our proposal to introduce seven consumer-focused Standards and three organisations Standards.

Having carefully considered comments, though, we are making some changes to the draft Code which we consulted on. These changes are set out in detail in this statement and include, among others, the following changes:

- amending the wording of the **Integrity Standard** to improve clarity and certainty
- amending the **Transparency Requirements,** as follows:
    - to make clear that merchant providers are only responsible for ensuring third-party contracted marketers comply with Standards and Requirements set out in Section 3 that apply to promotional marketing activities
    - to provide additional clarity that methods of exit from the PRS must be simple and must include the same method used by a consumer to sign up to or access the service, except in defined circumstances
- in terms of the **Fairness Requirements**, we are:
    - providing additional clarification in terms of the definition of 'verified email address' and, in particular, our expectations in terms of how providers should verify email addresses at the point of sign-up
    - re-introducing the SKIP function which we omitted from the draft Code in error and which enables charities to provide a monthly reminder to recurring donations 24 hours before the monthly donation is taken
    - removing the requirement for an annual re-opt-in to services and replacing it with the requirement that all subscriptions (except recurring donations to charity) send an annual subscription reminder providing details of how to opt out of the service
- amending the **Customer care Requirements** to provide additional clarity on the roles and responsibilities of different parties in the value chain and to clarify that basic rate phone numbers can be used for customer care

- amending the **Organisational and service information Requirements** to provide greater clarity for voice service providers and merchant providers in relation to contracted third parties and where exemptions and/or permissions apply
- amending the **DDRAC Requirements** to make clear that they apply to PRS contracts and that network operators need to have DDRAC policies and procedures in place, and clarifying in **Annex 2** that we only expect providers to make reasonable efforts to obtain information about regulatory or enforcement action taken against directors of other parties in the value chain and/or contracted third parties
- amending paragraph 3.7 of **Annex 3** to replace reference to phone-paid transactions only occurring over "correctly validated HTTPS connections" to "correctly validated and encrypted connections".

Supervision

Under Code 15, we will carry out supervisory activities to ensure we have ongoing oversight of phone-paid services and their providers to achieve and maintain compliance with the Code to prevent, or reduce, actual and potential harm to consumers and the market.

We will do this using a range of targeted compliance monitoring methods, including assessing complaints and other intelligence, audits, periodic reporting of data and information, targeted information-gathering, thematic reviews, skilled persons reports, engaging with PRS providers and conducting pre-arranged visits (by consent) to the premises of PRS providers.

In light of stakeholder comments received, we are not minded to make any changes to the proposals we consulted on. We note that, in the main, stakeholders sought additional clarity as to how we will apply our supervisory powers and the need to ensure proportionality. We address these comments in this document, including how we will also provide further details on this in our published procedures.

Engagement and enforcement

Under Code 15 we will carry out engagement and enforcement activities to ensure that PRS providers comply with the Code. This includes engaging with PRS providers to understand issues and trends in specific services, service types, sectors or the market in general. We also intend to engage with PRS providers where we have concerns about compliance matters, including in relation to the Standards and/or Requirements.

We are introducing the following key changes to our enforcement powers and procedures:

- a new approach to engagement and enforcement
- an enhanced settlement process
- strengthening the existing interim measures regime
- a more efficient adjudicative regime
- strengthening the test for prohibiting individuals
- strengthening and expanding our information gathering powers.

In light of stakeholder comments received, we are not minded to make any changes to the proposals we consulted on. Again, we note that, in the main, stakeholders sought additional clarity as to our new engagement and enforcement powers. We address these comments in this document, including how we will also provide further details on this in our published procedures.

General Code considerations

There are also some other general Code considerations which are set out in section 8 of this document. These include general funding requirements, definitions, specified service charges and call durations and amendment of Code provisions.

In light of stakeholder comments received, we are not minded to make any changes to the proposals we consulted on.

1. Background

Introduction

1. In December 2019, we published a new strategic purpose. The new strategic purpose sets out how we intend to regulate in the consumer interest. It signalled our intention to be a more proactive regulator that seeks to address harm – or potential harm – before it occurs to build consumer trust and confidence in the market. While flexible, our existing regulatory approach focuses on addressing harm – either through enforcement or policy intervention – after the fact.

2. To enable us to meet our strategic purpose, we embarked on a review of our regulatory framework – the Code of Practice. The current Code of Practice (14th edition) (Code 14) has been in force since July 2016. However, it has evolved largely from the 12th Code of Practice (Code 12), which was introduced after our last comprehensive review of regulation in 2011. This review of the Code is, therefore, the first comprehensive one in more than a decade.

3. As we set out in our discussion document and consultation document, the market we regulate has changed significantly in that period. When we first introduced outcomes-based regulation under Code 12, mobile-based services accounted for roughly 40% of market revenues. Consumers spent over £200 million on directory enquiries services and smartphone penetration was less than 50% of the population.

4. The market we now regulate is fundamentally different. Mobile-based revenues have accounted for more than 80% of revenues for the past four years in a row. Operator billing is the largest market segment (including games, entertainment, betting, gambling and lotteries). Voice-based services have declined over that period.

5. Consumer expectations have also changed, influenced by experiences in other markets and changes in legislation. Be it through research, engagement or complaints, consumers tell us that they expect phone payment to be consistent with other payment mechanics.

6. With this in mind, we feel it is time for us to ensure our regulation is up to date and fit for purpose to regulate today and tomorrow's market.

Aims and objectives

7. Our aim is to develop a new Code (Code 15) more suited for this new market and which meets consumers' expectations. We aim to do this by delivering a Code that:

   - **introduces Standards in place of outcomes**
     Code 15 will set minimum consumer-facing and organisational Standards for providers operating in the market to meet. We believe Standards should be clearer and easier for industry to implement and set minimum requirements for providers to adhere to that meet consumer expectations, while retaining the space for innovation to the benefit of consumers.

   - **focuses on the prevention of harm rather than cure**
     Our strategic purpose sets out our intention to be a more proactive regulator that seeks to address potential harm before it emerges. Our current approach to regulation allocates significant resources to addressing harm once it has occurred. We believe this approach no longer benefits consumers, providers or us. We want Code 15 to enable us to work with providers to build in best practice and compliance in the first place to avoid harm where possible and deliver services that consumers enjoy.

   - **is simpler and easier to comply with**
     We want regulation to be as simple and easy to implement as possible, therefore enabling legitimate services to flourish in the consumer interest. We understand that the current Code of Practice, and associated special conditions, guidance and exemptions, can be complex and we aim to address this.

8. While an emphasis on the prevention of harm in the first place should reduce the need for enforcement, we also recognise that any new Code must be underpinned by efficient and effective enforcement.

The process

9. Since we embarked on this review of our Code, we have taken a number of steps to ensure we have developed robust proposals that meet our aims and objectives and consider the views of all stakeholders. These are:

    - we published a discussion document in February 2020, which set out our early thinking and sought stakeholder input on our analysis of the market, review objectives and some early proposals. We received 18 submissions in response to the discussion document from a range of stakeholders, including consumers, consumer advocates and industry[1].
    - we published a consultation document in April 2021 which sought stakeholder input on our formal proposals and the draft Code. We received 45 submissions in response to the consultation document from a range of stakeholders, including industry, consumers and consumer advocates.
    - we engaged extensively with consumers, industry, regulators and other interested parties to get stakeholder thoughts and insight and to test our early proposal development as well as our formal proposals. This included hosting an industry forum in May 2021, holding multiple stakeholder webinars for consumers and industry, holding numerous one-to-one meetings with industry, consumer advocates and fellow regulators, and seeking the views of the PSA Industry Liaison Panel and the PSA Consumer Panel.

10. Ofcom has consulted on approving our Code. Under the Communications Act 2003, Ofcom may only approve our Code where it meets certain legal tests. Our Code of Practice must be approved by Ofcom for it to have legal force. Ofcom published a consultation document on approving Code 15 on 23 April 2021. In light of comments received by Ofcom, and Ofcom's assessment of those comments, Ofcom has decided that it can approve our Code, and is today publishing a final decision statement giving its approval to our new Code.

About this document

11. This document sets out our final decision on Code 15.

1 Annex 2 provides a list of published respondents.

2. The regulatory framework and our current regulatory approach

The regulatory framework

12. The Communications Act 2003 ("the Act") established the regulatory regime for telecommunications services, and established Ofcom as the regulatory body for such services.

13. In respect of phone-paid services (referred to in law as Premium Rate Services (PRS)), section 121 of the Act provides Ofcom with the power to approve a Code for the purposes of regulating phone-paid services. The scope of our regulatory remit is set out in the definition of "Controlled PRS", contained within the PRS Condition made by Ofcom.

14. Ofcom has designated us, through approval of the Code, as the body to deliver the day-to-day regulation of the PRS market. We regulate the content, promotion and overall operation of Controlled PRS through the imposition of responsibilities and requirements on providers of PRS in the Code.

15. In general terms, the regulatory framework for phone-paid services in the UK consists of a hierarchy of three legal instruments:

- **the Act**
  The relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Act. These provisions, among other things, provide Ofcom with the power to set a PRS Condition that binds the persons to whom it applies, for the purposes of regulating the provision, content, promotion and marketing of PRS.

- **the PRS Condition**
  The PRS Condition set by Ofcom under section 120 of the Act requires a person to whom the PRS Condition applies to comply with the PSA Code and with directions given by the PSA in accordance with the PSA Code for the purposes of enforcing its provisions.

- **the PSA Code**
  The PSA Code is approved by Ofcom under section 121 of the Act and outlines wide-ranging rules to protect consumers and sets out the PSA's regulatory functions, powers and procedures.

Our regulatory approach

16. We regulate phone-paid services in the UK, primarily through the Code. The Code currently sets outcomes and rules to protect consumers as well as the powers and processes we apply when regulating phone-paid services. We have responsibility for enforcing and administering the Code.

17. As well as broad outcomes, the Code currently includes a range of more prescriptive rules, including special conditions, as well as guidance, to support compliance in line with consumer expectations and protection requirements. The Code also enables us to exempt providers from strict adherence to Code provisions, where a Code objective can be achieved in other ways. This enables us to support the development of services that provide value to consumers.

18. From time to time, we review the Code to ensure it continues to operate in consumers' best interests and provides a fair and proportionate regulatory regime for industry. Ofcom has powers to approve the Code where it meets certain legal tests.

19. Our new strategic purpose, published in December 2019, states that we build consumer trust in phone-paid services and ensure they are well-served through supporting a healthy market that is innovative and competitive.

20. We do this by:

- **establishing regulatory standards for the phone-paid services industry**
  We set Standards, via our Code of Practice, to ensure that consumers who charge a purchase to their phone bill do so knowingly and willingly and receive good customer service. The Code standards are supported by guidance, free compliance advice, and examples of best practice.

- **verifying and supervising organisations and services operating in the market**
  We require all organisations operating in the phone-paid services market to register

comprehensive details about themselves and the services they provide, and we make this information available to consumers. We require all parties in the phone-paid services industry to check the credentials and behaviour of who they work with, and to have systems in place toidentify and deal quickly with issues affecting consumers.

- **gathering intelligence about consumers, the market and individual services**
  We invest in research and our expert monitoring capabilities to improve our understanding of market trends, consumer behaviour, experience and expectations, and use this to inform and enforce the standards we set.

- **engaging closely with all stakeholders**
  We engage with all stakeholders – consumers, industry, government and other regulators, and the media – to inform and facilitate our regulatory approach.

- **enforcing our Code of Practice**
  Where apparent breaches of the Code are committed, we investigate and enforce, where appropriate, in the most efficient and effective way possible. We aim to eliminate sharp practices, negligent behaviour, and the deliberate use of phone-paid services to exploit consumers.

- **delivering organisational excellence**
  As a regulator, we are committed to acting in a transparent, accountable, proportionate, consistent, and targeted manner in everything we do.

3. Market and consumer context

Background

21. One of the key motivations for undertaking a comprehensive review of the Code is the extent to which the market has evolved and matured. Code 15 needs to be relevant and fit for purpose for today's and tomorrow's market. This requires us to consider market developments and consumers' experiences and expectations. In our discussion document we set out, in some detail, how the market has evolved over the past decade and outlined the consumer research we have conducted during this time. In our consultation document we set out the comments we had received from stakeholders on our assessment of the market and consumer context.

Market context

22. We noted in the discussion document how the market has moved from being heavily dominated by voice-based services, to one which is now dominated by digital services consumed via mobile phones, with traditional voice services declining. The market has evolved from one consisting primarily of small and medium-sized enterprises (SMEs) to one with major platforms, large blue-chip companies and major brands using phone-paid services.

23. The discussion document noted that there are significant opportunities for continued market growth as consumers become both more aware of and confident about making purchases using their smartphones, with an increasing number of merchants offering phone-paid services as an option. We also concluded that there is a need to better align the regulation of phone-paid services with broader market issues to support a more consistent and trusted consumer experience.

24. In our consultation document, we noted the feedback we had received relating to the need to ensure that Code 15 works for the whole market – for blue-chip companies and SMEs and for both payments and donations – and that we should aim for a greater degree of consistency across the whole payment infrastructure.

25. The trends we identified in our discussion document have been confirmed by the Annual Market Reviews (AMR) of 2019/20 and 2020/21, with operator billing remaining the largest spending channel (43%) and the continued decline in voice-based services. 2020/21 however saw declines across all spending channels, except charity donations which grew by 25.7%. The declines in operator billing and Premium SMS (PSMS) was driven in large part by significant declines in subscription-based services for both channels, following the introduction of special conditions for subscription services.

Consumer behaviour, experience and expectations

26. In our discussion document, we noted that phone-paid services are not as well-known as some other forms of digital payment, but consumers' expectations are informed by their experience of using other forms of digital payment. Generally, consumers are positive when they are engaging with larger and more well-known brands who offer phone-paid services but are less positive, or less certain, when they are engaging with a lesser-known service and in circumstances where they may not have sought the service out. Consumers are now more familiar with paying for content and services online, but they still sometimes find themselves inadvertently signed up to a phone-paid service with a lack of awareness of how to seek a refund for that service.

27. We noted that while the market is delivering well for consumers, there are some problem areas and still opportunities to improve the consumer experience. Respondents to our discussion document broadly agreed with the conclusions we drew but highlighted the need to balance the interests of consumers while avoiding stifling innovation which is in the interest of consumers.

28. In our latest published AMR, 54% of UK adults used at least one phone-paid service in 2020/21, with a broad consumer base across age, gender and region. The main drivers for the use of phone-paid services continue to be convenience, impulse purchasing and price.

29. Around 75% of users reported no problems with using phone-paid services. The reasons cited for the problems that did occur are broadly consistent with previous years: having difficulties in accessing or using a service (45%), differences from what was advertised (39%), and the price (38%).

30. One notable finding from 2020/21 is that the Net Promoter Score for the phone-paid services industry

has significantly declined from (–17) in 2019/20 to (-27) in 2020/21. This finding does need to be taken in the context that Net Promotor Scores have also fallen in a number of other sectors during this time.

Future trends

31. In our discussion document, we observed that the future was likely to see more engagement from blue-chip companies and that this would be driven in large part by the continued growth of app store purchases. We also expected to see continued growth of operator billing and some PSMS (such as radio and broadcast competitions) and the continued decline of voice-based services. We felt that there would be increases in consumer awareness, confidence and trust of phone-paid services, particularly as a result of blue-chip companies offering phone-paid services either as an option or as default.

32. Our latest AMR confirms the conclusions we drew in our discussion document and we are satisfied that nothing in the AMR suggests that we need to amend our overall approach to Code 15.

4. Proposed regulatory approach

Background

33. In our consultation document, we set out our initial thinking for a new regulatory approach, taking account of our new strategic purpose, with a view to ensuring our regulation remains fit for purpose, now and into the future. We highlighted the following key broad themes in terms of possible changes to our regulatory approach:

    - introduces Standards in place of outcomes
    - focuses on the prevention of harm rather than cure
    - is simpler and easier to comply with.

What we said

Introduces Standards in place of outcomes

34. We said we currently operate a broad outcomes-based Code which is primarily focused on the achievement of outcomes, but with a range of more prescriptive rules built in over time.

35. While this approach has served us well, we said we were increasingly finding that it does not always deliver good consumer outcomes as it can lead to a lack of clarity in terms of our requirements and expectations of industry. We said that our experience is that this approach allows for significantly different interpretations by organisations as to how best to achieve the desired outcomes, potentially leading to harmful practices and necessary regulatory action to ensure consumers are protected from harm.

36. We noted that another common criticism of our current approach is that it results in a relatively complex regulatory system. This is because it relies on reactive and responsive regulatory action to clarify expectations, either through policy or enforcement-based interventions. Consequently, regulation is built up bit by bit over many years, resulting in unnecessary cost and uncertainty. We said that through this review, we want to consider the merits of moving to a regulatory regime that is built around establishing market standards. We identified the following benefits:

    - greater clarity as to what is expected from industry in line with market best practice in the phone-paid services and other relevant adjacent markets
    - a more effective way of meeting consumer expectations, leading to increased trust and confidence in the market
    - greater flexibility in how regulation is applied, including the ability to consider alternative means to achieve the regulatory standards, such as exemptions from strict adherence to certain Code Requirements, for those organisations who commit to meeting the agreed Standards.

Focuses on the prevention of harm rather than cure

37. We said that under Code 14 entry to the phone-paid services market is relatively open, with limited PSA registration requirements and responsibility for enabling, facilitating and delivering compliant services by various regulated parties throughout the value chain. Our experience is that this means it is far too easy for non-reputable firms to enter the market and cause consumer harm, resulting in trust and confidence in the market being damaged. This is highlighted by the fact that a number of parties who have been subject to enforcement action have simply liquidated or otherwise exited the market following the imposition of sanctions against them.

38. Accordingly, we said that through this review we want to explore the benefits of moving to a model which has an increased focus on verification and ongoing supervision, for the benefit of market health, integrity and reputation and consumer confidence.

Is simpler and easier to comply with

39. We said that we wanted to ensure that the draft Code was simpler and clearer for industry to comply with. To do this, we said that we considered it appropriate to review the role, purpose and structure of the Code. We said that some of the proposals we are considering would allow us to meet the needs of consumers in a changing market, not least by giving us greater scope to regulate more flexibly and proactively. We highlighted the following potential benefits of such an approach:

    - providing increased certainty to industry stakeholders in terms of our requirements and expectations through the establishment of regulatory standards
    - making it easier to update certain standards in response to market developments and changes in best practice
    - the potential for more flexible regulation, including the ability for regulated parties to achieve the regulatory standards through alternative means, where regulated parties commit to meeting the agreed Standards.

Regulatory Standards and Requirements

What we said (including questions asked)

40. In our consultation document, we proposed that our regulatory approach should be based on setting overarching regulatory Standards, each of which is supported by a set of more detailed Requirements. We proposed to introduce seven consumer-focused Standards and three organisational Standards. These are:

Consumer-focused

- integrity
- transparency
- fairness
- customer care
- vulnerable consumers
- consumer privacy
- prevention of harm and offence.

Organisational

- organisation and service information
- DDRAC
- systems.

41. We proposed that each Standard sets out the expected level of quality that relevant providers must achieve in relation to the provision of phone-paid services. These Standards will cover the provision, content, promotion and marketing of phone-paid services and will be enforceable on their own.

42. We proposed that each Standard should be underpinned by Requirements that are designed to support providers in achieving the Standard.

43. We asked the following question:

Q1: Do you agree with our proposed regulatory approach relating to regulatory Standards and Requirements? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

44. ***BT*** was generally supportive of our proposed approach relating to Standards and Requirements but noted that since these are not prescriptive rules, they need a supporting framework of guidance and best practice. It also felt that the Standards and Requirements should be open to re-consultation in the event that proposals published as part of the supporting framework alter the interpretation at first sight of the proposed rules.

45. ***Telecom2*** welcomed the move from outcomes to Standards and, in principle, was very happy with it. It noted outcomes have proved to be too open to individuals' interpretation of their application, causing uncertainty in the industry and deterring investment.

46. ***VMO2*** welcomed the PSA's review of the current regulatory framework and the proposed approach to regulatory Standards and Requirements to provide greater clarity. It noted that such an approach should be treated with caution as an overly prescriptive approach to regulation could have unintended consequences that might stifle innovation and undermine attempts to raise market standards.

Level 1 providers

47. ***Donr Ltd*** broadly agreed with the need to move to a standards-based approach. It noted these Standards should be clearly defined and realistically attainable.

48. ***Fonix*** supported our proposed regulatory approach relating to regulatory Standards and Requirements.

49. ***Infomedia*** broadly agreed with the approach in terms of bringing more certainty back into the regulatory systems with a particular focus on prevention. It said this aligned with financial regulatory approaches for other payment instruments and should enable swifter corrective action to be taken in the event Standards are at risk of not being met. It said, in principle, it brings clarity but needs to be backed with robust administrative processes to enable change to be made quickly and effectively to ensure that the detail of the Standards can react to both positive and negative changes in the marketplace, be that technology or sources of risk.

50. ***Mobile Commerce & Other Media Ltd*** said the Standards themselves, are a good basis for regulation and seem to be in line with outcomes-based regulation. However, it noted the Requirements under each Standard are very prescriptive and are not proportionate. It said the draft Code is meant to be easier and simpler to comply with, however the use of Standards and then very prescriptive, wordy Requirements, in addition to the Standards, means that consequently the Code is very lengthy, cumbersome and difficult to comply with.

51. ***One industry respondent*** said the timing of this review is appropriate given the amount of consolidation that has taken place among Level 1 providers since the last review and the growth/development of alternative payments.

52. ***Another industry respondent*** agreed in principle, with our proposed approach. They said Standards should allow more clarity. However, it was concerned about whether this is a true standards-based approach. It said without full detail it is impossible to say, but the draft Code gave the impression that it would be a mixture of Standards, outcomes and subjective opinion.

Trade associations

53. ***aimm*** said that its members are generally open to the principle of moving to Standards and there was support for the approach. However, it was concerned that, within the Code and accompanying consultation document, there was not enough detail for a comprehensive decision to be taken on the Standards put forward in terms of how they would be applied, including in terms of guidance and best practice. It asked that the PSA engage with industry to understand the limitations that strict Standards may have on technical neutrality.

54. It said some of its members felt that the problems being addressed in this Code have already been solved (for example on the security framework) and that a fuller registration process (with verification) rather than a Standards approach is needed.

55. ***FCS*** said it is supportive of the move to more proactive regulation which is clear, simple to use and all in one place.

56. ***Mobile UK*** said it was a timely moment to assess how the PSA can improve its regulation to keep pace with change, and it supports many of the changes that the PSA is proposing.

Charities

57. ***Chartered Institute of Fundraising*** supported the introduction of Standards and agreed with the themes we had adopted. It noted these mirrored the values of fundraisers and charities.

58. ***Macmillan Cancer Support*** was pleased that the PSA is placing a greater emphasis on the prevention of harm versus rectifying issues that have already gone wrong. It also liked the emphasis on the importance of adhering to robust consumer focused Standards. It agreed that a principle-based approach to regulation is more flexible and allows for greater innovation than a rules-based approach. It said that the change of approach is welcomed and in line with other regulatory codes.

59. ***RSPCA*** supported our proposed regulatory approach relating to regulatory Standards and Requirements.

60. ***One charity respondent*** agreed in principle.

Consumers and consumer advocates

61. ***Communications Consumer Panel (CCP) and Advisory Committee for Older and Disabled people (ACOD)*** believed that our newly proposed regulatory Standards and Requirements would provide consumers, citizens and micro-businesses with protections and help prevent consumer harm. It also supported our proposed shift towards prevention of harm rather than cure.

62. ***Phone-paid Services Consumer Group (PSCG)*** agreed with the introduction of regulatory standards, but worried that these fail to address some of the major issues affecting PRS consumers.

63. ***Which?*** was broadly supportive of the proposals for the draft Code. It thought the shift towards standards-based regulation, as opposed to principles or outcomes-based regulation, should make the regulations simpler for providers to follow while also ensuring that minimum standards are met to protect consumers in this market. It said it was particularly supportive of our efforts to focus on prevention of harm. It said this, alongside the proposal to have a number of consumer-focused Standards within the regulations should help to prevent and protect consumers from harm, while also improving trust and confidence in the phone-paid services market.

PSA's assessment of inputs received

64. We note that respondents were broadly supportive of our proposed approach relating to regulatory Standards and Requirements. In particular, there was general agreement that this proposed approach would lead to greater clarity.

65. We also note some stakeholders, including some who attended our webinars, expressed concern about avoiding an overly prescriptive approach to regulation which could have unintended consequences. We agree with these comments and our view is that our proposed regulatory Standards and Requirements are not overly prescriptive but are targeted at the harms we are looking to address. In particular, the vast majority of these are already in place under Code 14 and are not new Requirements. In addition, our tailored approach to regulation, including our proposed permissions regime (see paragraphs 217-262 for more detail), is intended to provide greater flexibility for providers, and will enable businesses to achieve the objectives of the Code by alternative means than those specified in the Code.

66. Another concern in the written responses and raised at our webinars related to the potential difficulty of commenting on the consultation proposals in the absence of published draft guidance. We do not agree with this view. First, this is not a new approach and is consistent with previous approaches which we have adopted in past Code reviews. Second, it is important to be clear that the primary purpose of guidance is to support compliance with the Code and does not add anything additional to the Code. Accordingly, our view is that it is not appropriate to consult on guidance until after the Code is finalised. On this basis, our view is that our proposed approach of consulting on draft Guidance following on from publication of this statement would not negatively impact on the ability for stakeholders to respond to the proposals set out in our Code 15 consultation.

67. We also note that one stakeholder argued that the draft Code is lengthy, cumbersome and difficult to comply with. We do not support this view. This is also not a view which was supported by the majority of stakeholders who commented in this area. As already mentioned, many of the Code provisions are either

existing provisions from Code 14 or contained within special conditions or guidance. Under Code 15, we are looking to consolidate these provisions, by bringing these into the Code; we consider this will simplify regulation by making it clearer and easier for providers to understand what they need to do.

Final decision

68. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraphs 2.1.1 - 2.1.3 on our proposed regulatory approach relating to regulatory Standards and Requirements.

Service-specific requirements

What we said (including questions asked)

69. In the current regulatory framework, there are 14 sets of special conditions which apply to specific categories of service. As we set out in our consultation document, we are proposing to remove special conditions in Code 15 and incorporate relevant provisions into Requirements under the proposed Standards.

70. However, we proposed to retain some provisions of current special conditions and guidance within a service-specific Requirements section of Code 15. This is where we believed the Requirements are so specific to certain types of service that they cannot be easily applied to all services.

71. We proposed service-specific Requirements for the following service types:

- society lottery services
- professional advice services
- competition services (including TV and radio broadcast services and voting services, and call TV quiz services)
- remote gambling services
- live entertainment services
- services using virtual currency.

72. All the proposed Requirements have been adapted from the current special conditions, except the proposed Requirements for services using virtual currency and some of the proposed Requirements relating to competitions, which have been adapted from relevant guidance notes.

73. We also simplified and condensed the proposed Requirements where, in our provisional view, it was appropriate to do so. For example, where a category of service is dual regulated, such as remote gambling and society lotteries, we reduced the number of applicable Requirements by not replicating Gambling Commission rules. We also removed the requirement for a bond for live entertainment services - this was on the basis that we believed the Standards and increased supervision/compliance monitoring combined will provide adequate consumer protection.

74. We also proposed to move away from the concept of "high risk" services which is the current threshold to be met for the introduction of special conditions. Our provisional assessment was that the need for such a threshold is obviated by the move to Standards which apply across the board. The move away from the "high risk" threshold will also provide us with greater flexibility to update or amend these service-specific Requirements as needed (following consultation) without the need to consider whether or not a service is "high-risk". This will mean, going forward, we will be able to respond to issues, or changes in technology or consumer expectations, much more swiftly.

75. We asked the following question:

Q2: Do you agree with our proposed regulatory approach relating to service-specific Requirements? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

76. ***BT*** agreed with our proposed regulatory approach and said the consolidation of relevant rules will help simplify the standards expected of providers operating such services and removes any redundant requirements.

77. ***Telecom2*** supported this, in principle, although said it is difficult to see a meaningful difference between service-specific Requirements and special conditions. It said much would depend on the quality of the information that supports them, and without visibility of any of this it cannot give a full answer.

78. ***VMO2*** broadly agreed with our proposed regulatory approach to service-specific Requirements and said it would allow for simplified and reduced regulation.

Level 1 providers

79. ***Donr Ltd*** said it has reservations about moving away from "high-risk" designation of services, if the outcome means lowering standards for bad services and raising standards for good services. It said the PSA has provided little evidence of harm from charity donations and society lotteries and that it is unacceptable to burden these service types with additional regulation, should harm manifest elsewhere.

80. ***Fonix*** agreed with our proposed regulatory approach relating to service-specific Requirements.

81. ***Infomedia*** said that while it has no specific experience with the services listed in this section, it welcomed the change of language. It also welcomed bringing service Requirements into the main body of the Code as this should make it more straightforward to find and understand the regulatory regime for these services.

82. ***Mobile Commerce & Other Media Ltd*** said special conditions should be kept in place and not included in the new Code. It said services should still be assessed on a risk basis and with the ability for that to be fluid and to change as the market and service types and needs change. It felt this could not be done if the Requirements are included in the Code, as opposed to special conditions. It said this approach is not dynamic, and only allows for the Code to go out of date quickly as service types and the market changes.

83. ***One industry respondent*** said in principle this is a better approach than currently exists provided that, as further guidance is released, it is done in a clear manner.

Broadcasters

84. ***Global*** did not agree with our proposed regulatory approach relating to service-specific Requirements and made some detailed comments in relation to some of the specific provisions contained in the draft Code which are detailed in Chapter 5 (see paragraphs 790-792).

Trade associations

85. ***aimm*** said its members are generally open to the idea of service-specific Requirements, instead of special conditions, but that there should be guidance or best practice that will inform those Requirements. It said that without sight of supporting documents to inform members further, they could not fully agree with this approach.

Charities

86. ***RSPCA*** did not agree with our proposed regulatory approach relating to service-specific Requirements but did not provide any further explanation as to why.

87. ***One charity respondent*** agreed in principle.

Consumers and consumer advocates

88. ***PSCG*** agreed that it is almost impossible to designate a service as "high risk". It said that when

regulation is tightened for one service type, unscrupulous companies will turn their attention to other service types.

PSA's assessment of inputs received

89. Having considered stakeholder responses, we note that the majority of respondents were supportive of our overall approach to service-specific Requirements and, in particular, our proposal to remove special conditions in Code 15 and incorporate some of the Requirements into the proposed Standards.

90. Some respondents made some specific comments about the service-specific Requirements which are dealt with in paragraphs 788-796 of this statement.

91. Some respondents, again, commented on the potential difficulty of commenting on the consultation proposals in the absence of published draft guidance. We have already addressed these points at paragraph 66 above.

92. We also note that respondents also said that there is a need for guidance to support the service-specific Requirements (draft Code paragraphs 3.11-3.16.2). We think that the provisions are sufficiently clear and do not require further specific guidance. Our approach to guidance is that we will include service specific examples in the guidance as and when appropriate and useful; the proposed content of guidance will be subject to consultation.

93. We note that one respondent expressed reservations about moving away from designating services according to risk if this meant lowering standards for bad services and raising standards for good services. We do not agree that our proposed changes will lead to this outcome. It is important to note that this change does not represent a lowering of standards; indeed, contrary to this, we expect the opposite to be true, and that standards should be raised for all services through the provision of greater clarity as to what is expected from industry.

94. We agree, as one respondent has noted, that there is a need for fluidity and for the Code to keep pace with market and technological change. However, we do not agree that this means we should keep special conditions in place. The move away from having a "high-risk" threshold will provide us with more, rather than less, flexibility to update or amend the service-specific Requirements (following consultation) as needed.

Final decision

95. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 2.1.4 on our proposed regulatory approach relating to service-specific Requirements.

Guidance and advice to support compliance with the draft Code

What we said (including questions asked)

96. We proposed to continue to provide guidance to provide any additional clarity and certainty which may be required to assist PRS providers to comply with the Standards and Requirements. While the guidance will not be binding on providers, we will take into account whether or not providers have followed the guidance in considering any alleged breach of the Code and/or the imposition of sanctions. We will also take into account the extent to which providers have attempted to comply with the Code by using methods other than those set out in the guidance, and/or the extent to which providers have engaged with us as part of developing any such alternative methods.

97. We set out our intention to consult on guidance following on from the publication of our statement on Code 15. We said we would welcome comments from stakeholders on our proposed approach to guidance as well as areas where guidance would be helpful. We included in Annex 3 of the consultation document a provisional list of the guidance which we intended to consult on following publication of our statement.

98. We also proposed to continue to offer compliance support by issuing non-binding compliance advice to providers on request. Our provisional view was that whether or not providers have sought and/or followed compliance advice will be taken into account in considering any alleged breaches of the Code and/or imposing sanctions.

99. We asked the following questions:

Q3: Do you agree with our proposed regulatory approach relating to guidance? Please provide an explanation as to why you agree or disagree.

Q4: Are there any areas where you consider that guidance would assist with compliance with the Standards and Requirements?

Q5: Do you agree with our proposed regulatory approach relating to compliance support? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

100. ***BT*** supported the publication of guidance but noted that given the extensive changes to the new Code, it would have been preferable to evaluate the entire framework holistically. It requested that where potential conflicts between the guidance and the new Code are identified that relevant sections be open to re-consultation where there is a material risk of harm to consumers or to industry. It agreed with the areas proposed for draft guidance, as outlined in Annex 3 of the consultation document but argued that the PSA should consult on an approach document for its new supervision framework. It also agreed with the PSA's approach to compliance support. It noted that the existing compliance advice service is a helpful tool but that clearer signposting on the PSA's website, as well as enhancements to the Tribunal Adjudication search functionality, could improve industry's ability to 'self-serve' some of the more common compliance queries, leading to greater efficiencies. It also said that the PSA should consider adding service level agreements for compliance support.

101. ***Telecom2*** said that since guidance had not been included in the document it could not be evaluated. It said unless the Standards and Requirements are very explicit and prescriptive, it would have thought that all areas would benefit from guidance. It also commented that if Standards and guidance are comprehensive and clear there should be less need for compliance advice. It said it would like the PSA to stand by its advice even if it later differs from the view of another member of the PSA.

102. ***VMO2*** said that since the consultation of guidance will follow the publication of the PSA's statement, it could not comment on whether it agreed with the proposed approach or if there were other areas in which guidance could assist. It agreed with the proposed regulatory approach to compliance support.

103. ***Vodafone*** said it considered that best practice (draft Code paragraphs 2.3 and D.2.8), guidance (draft Code paragraphs D.2.36, 2.2.1, 2.4.4) and compliance advice (not defined in the Code) is non-binding and that guidance given or contained in a PSA document is open for challenge and can be overruled by the Code Adjudication Panel (CAP). It noted that following guidance is seen to be merely a mitigating factor (draft Code paragraphs 5.8.1 and 5.7.3). It said that if a network or merchant has followed PSA best practice, guidance or compliance advice fully, Vodafone believes this should not be mitigating factor to any ruling made by the CAP, but rather is a deciding factor as to whether a case should be brought before the CAP in the first place. It said if the PSA is unable to stand behind its advice it should either withdraw all forms of compliance advice and written guidance and rely solely on the Code or the compliance advice and guidance issued by "skilled persons".

Level 1 providers

104. ***Donr Ltd*** said it understood the intent of guidance but would caution that it appears that previous guidance has been difficult to interpret and/or apply in real-world scenarios. It suggested a consultation is held on the scope for compliance support (i.e. the compliance team helpdesk) before reviewing the guidance in autumn 2021, so as to properly assess the entire chain around guidance. It did not believe the role of the compliance team has been discussed before, but a continuing grievance is advice issued by the PSA compliance team cannot be relied on in the event of an investigation. If the guidance, best practice and advice standards are raised to a level that can bring absolute certainty then it would provide reassurance to new entrants to the market that their service is fully compliant before they go live.

105. It noted that Annex 3's range of guidance contains topics that have come from reacting to areas of harm. It said it would be good to see more emphasis on enablement of services, for example giving concise regulatory wording for promoting a text giving service or society lottery, which can be followed

by a typical charity with little to no familiarity of how PRS should work. It is also noted that some guidance is several years old and out of step with standard practice now. It argued that a more rigorous review process would better manage guidance falling out of touch with consumer trends.

106. It did not agree with our proposed regulatory approach relating to compliance support and said that the PSA should look to allow compliance support to give binding advice through consultation.

107. ***Fonix*** agreed with our proposed regulatory approach relating to guidance. It said it would need to see the proposed guidance documentation and would request the opportunity to input into any discussions around the practical implementation of such guidance. In terms of any areas where it considered that guidance would assist, it noted that DDRAC should have minimum standards and requirements to remove any ambiguity around what is considered sufficient DDRAC and have a clear structure for everyone in the value chain. It also agreed with our proposed regulatory approach to compliance support and noted that compliance support is important to new entrants into the market. It also felt that timescales for responses at present are quite slow which impacts merchants in terms of provisioning and promoting services in a timely fashion.

108. ***Infomedia*** believed that it is proper that the PSA issue guidance on the basis that compliance with guidance provides a defence in the event of allegations of Code non-compliance. It was, however, concerned by the line: "we will also take into account… the extent to which providers have engaged with us as part of developing any such alternative methods". It said this strongly implies that should a provider comply with the Code in a manner not set out in the guidance it will be expected to seek prior consent or be subject to a requirement to inform. It was concerned this would therefore subvert the principle of guidance being non-binding and blur the lines between this and the more formal process for seeking bespoke permissions, as well as failing to resolve the existing uncertainty surrounding the distinction between the Code and guidance.

109. In response to compliance support, it also argued there is a risk with the wording of this statement that the PSA is both subverting the purpose of guidance and potentially making a rod for its own back. It said if there is a risk of severe repercussions for not seeking advice for any deviation from guidance a reasonable business will always seek such advice, increasing the PSA workload leading to delay and resource stretch.

110. ***Mobile Commerce & Other Media Ltd*** said that by adding additional guidance in conjunction with the main Code, it is harder to follow as the Requirements are not all in one place. It said that any Requirements should be within the main Code, all in one place and easy to find and follow. It said the guidance should be published with the draft Code before it is approved, with the opportunity for industry engagement and an opportunity for amendments to both before implementation.

111. In relation to compliance support, it said that firms who seek advice from the PSA on compliance should be given binding advice. It noted they are seeking out the correct answers and proactively asking for help and support. It said this should not be given on the basis that the PSA can then change their mind at a later date.

112. ***One industry respondent*** said that guidance is critical, but it felt it was unable to respond to the question on proposed regulatory approach to guidance on the information provided. It said in principle, guidance is necessary for clarifying expectations and standards throughout, but only where that guidance adds clarity, not if it creates separate expectations. In terms of compliance support, it said if done correctly, this will be a huge positive addition in how the PSA operates and the information it can give to support the companies who want a growing, healthy market.

113. ***Another industry respondent*** said that a renewal and updated sector specific guide and best practice for the charity sector would be helpful.

Broadcasters

114. ***One broadcaster*** said it is difficult to comment since guidance had not yet been issued. It argued that guidance should have been provided to support the draft Code at this stage to allow full evaluation. It said that, without the support of guidance, it is difficult to fully endorse the new Standards.

115. ***Global*** did not agree with our proposed regulatory approach relating to guidance. It said that any guidance must be released and consulted upon before the Code is implemented. It said that it felt like it could be a way of pursuing "stealth tactics" to change regulation with little input.

Trade associations

116. ***aimm*** said that guidance could not be evaluated since it has not been included in the consultation document. It noted that the consultation document stated that: "While the guidance will not be binding on providers, we will take into account whether or not providers have followed the guidance in considering any alleged breach of the Code and/or the imposition of sanctions."

117. It felt that this means that the value chain is being asked to agree to a Code that will be supported by guidance which may be used against them with no transparency around what that guidance will be.

118. Equally, it said there is concern around the interpretation/potential subjective application that could occur with individual personnel within the PSA Executive. A live example is verbal assurance which has been received from an individual Member around DDRAC being applied on the next contracted party in the value chain being at odds with another expressed view from the PSA that the onus would be on MNOs to ensure they have awareness via their own risk control of merchants (via monitoring houses) but with no clarity to the extent. This is one example demonstrating why clarity through guidance is necessary before industry can agree to Standards.

119. It also said its members agreed that the current model of compliance support needed to be made more efficient and effective. It said that currently compliance advice can be quite long-winded and not always useful. It argued there is a strong sense that it is also subjective and, due to the outcomes-based nature of the current Code, cannot be absolutely tied to an area of Code for absolute assurance. It argued that it is imperative that the compliance advice offered is consistent and equitable for all parties. It also sought clarification on the use of compliance houses if the PSA are to take on that role.

120. ***FCS*** supported our proposal for clear, simple to follow and understandable guidance that is centralised. It noted that its members would be interested in clear guidance on 087, 118 and 09 number services and registration requirements and costs as well as guidance on Information, Connection and Signposting Services (ICSS).

Charities

121. ***British Heart Foundation*** welcomed the PSA's commitment to publish and consult on best practice information and guidance. It felt that the PSA's future best practice information and guidance would benefit from including additional resources for charities in relation to running compliant campaigns. This would be of particular benefit if it focused on practical steps about how the provisions of the Code apply to charity campaigns and launching new services, with assurances that if the guidance is followed the campaign would be considered compliant. It also argued guidance and best practice information could also be improved with some additional clarity on which elements are statutory, and where elements of the guidance and best practice information go over and above this.

122. ***Macmillan Cancer Support*** recognised the importance of having supplementary guidance to compliment the Code. However, it said it would welcome some further clarification as to whether providers would need to consult the PSA if and when compliant alternatives to the guidance are identified.

123. In respect of compliance support, it said it is concerned that the PSA is saying that "not" seeking compliance advice could be seen as a contributing factor in any enforcement case and it questioned this logic. It said that if a provider considers the steps they are putting in place are robust and compliant then why would they seek compliance support?

124. ***RSPCA*** agree with our proposed approach relating to guidance. It also agreed there were other areas where it considered that guidance would assist with compliance with the Standards and Requirements, although it did not specify what these were. It also agreed with our proposed regulatory approach to compliance support.

125. ***One charity respondent*** agreed with our proposed regulatory approach relating to guidance and said that charities would benefit from guidance on how the Code applies to charity campaigns.

126. ***One other charity respondent*** agreed in principle with our proposed regulatory approach to guidance and compliance support.

Consumer and consumer advocates

127. ***PSCG*** agreed with our proposed approach to guidance. It said that Tribunals should take a failure to

follow guidance as an aggravating factor. In terms of other areas where guidance may be helpful, it highlighted complaints handling and refunds as areas which needed to be tightened and clarified. It also argued the lack of a clearly defined disputes resolution procedure is unacceptable. It broadly agreed with our proposed regulatory approach relating to compliance support although observed that care needs to be taken that PSA resources aren't overstretched by providing such advice.

PSA's assessment of inputs received

128. We note that a number of respondents raised concerns relating to the potential difficulty of commenting on the consultation proposals in the absence of published draft guidance. As we explain in paragraph 66 above, we do not agree with this view.

129. We also note a number of respondents expressed concern about the status of guidance and compliance support in the context of any subsequent investigations and our proposed approach that following published guidance and seeking and following compliance advice would be taken into account as part of any investigations. We remain of the view that this is an appropriate approach and that it should be taken into account (in terms of mitigation) where we suspect potential breaches and may move to formal enforcement action. We consider it must be a relevant factor as part of any investigation where breaches are suspected although not the only factor. We do not agree, as one respondent suggested, that it should not be a mitigating factor to any ruling made by the CAP, but rather is a deciding factor as to whether cases are brought to the CAP. As an enforcement agency, we consider it is important that we are able to continue to provide compliance support and advice, where requested, but this cannot be a determining factor in terms of whether future breaches are considered and brought to the CAP. It is important that, in these instances, we are still able to move to enforcement action where we consider, on the merits of each case, that this is necessary.

130. In terms of our question on additional areas where additional guidance may be helpful, we note some respondents felt unable to comment on the information provided. As we have already stated, we intend to consult more formally on guidance following on publication of the final Code (and this accompanying statement). Areas which were highlighted where potential guidance may be helpful, included:

- our approach to supervision
- greater emphasis on the enablement of services, including concise regulatory wording which could be followed by charities with little to no familiarity of how PRS work
- a sector specific guide for the charity sector
- DDRAC and guidance on 087, 118 and 09 number services
- registration requirements and costs and ICSS.

We also note that one respondent argued that all areas would benefit from guidance.

131. In responding to these points, it is important to note that we will be publishing more information about our approach to supervision and our procedures during the implementation period. We will also be refreshing our registration help notes in light of the new Code 15 registration requirements. While we note the desire for sector specific guidance, especially around charities and ICSS, we are not of the view that full guidance is needed but we will be using sector specific examples in the guidance we are producing and will welcome views of the extent to which this assists various sectors to comply with the Code in our forthcoming consultation on Code 15 guidance.

132. We also note and agree with the comments that some of the Code 14 guidance is several years old and that under Code 15, guidance needs to be reviewed on a more regular basis.

133. We do not agree with the view that all areas would benefit from guidance. The purpose of the new Code is to provide as much clarity and certainty within the Code as possible. It is, therefore, not clear that guidance would be necessary in all areas. We see guidance under the new Code being targeted in areas where additional clarity and certainty are necessary. This is what we will be consulting on as part of our proposed guidance consultation.

134. There was general consensus on the importance of compliance support to industry albeit respondents observed that if the Standards and Requirements and any accompanying guidance material are clear, then there should be less need for compliance support. We also note and welcome comments

made about how the PSA could improve its website to enable more providers to "self-serve" their compliance queries.

135. We do not agree with comments made relating to potential inconsistencies in terms of compliance advice provided by the PSA, on request. In providing such advice, we always ensure that it is made within a consistent policy framework, irrespective of which individuals at the PSA are providing it. We do not agree with comments around adding service level agreements. We always endeavour to provide compliance advice in a timely manner and aim to provide advice within five working days where possible, within our current resource constraints. This will remain the case under Code 15.

Final decision

136. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraphs 2.2 on our proposed regulatory approach relating to guidance and advice in support compliance with the Code.

Best practice information

What we said (including questions asked)

137. We proposed to publish and update best practice information following appropriate consultation. We said this will aim to focus on actions and behaviours that go beyond compliance with the Standards and Requirements by setting out what we consider to be the most effective way of meeting consumer expectations in the provision of phone-paid services.

138. We proposed to take compliance with best practice information into account when considering any alleged breach of the Code and/or imposing sanctions.

139. Where a PRS provider has achieved an expectation set out in the best practice information, we proposed that we are able to review and vary compliance monitoring requirements in respect of that provider.

140. We asked the following questions:

Q6: Do you agree with our proposed regulatory approach relating to best practice information? Please provide an explanation as to why you agree or disagree.

Q7: Are there any areas where you consider that best practice information would be helpful?

Stakeholder comments

Network operators

141. ***BT*** agreed with the principle of issuing best practice information which it sees as a useful lever to raise market standards but said that it expected sufficient flexibility to ensure standards are not static and keep pace with changes within industry and technology.

142. ***Telecom2*** did not agree with our proposed regulatory approach relating to best practice information. It said it was difficult to evaluate as no examples of best practice are given. It said it would expect best practice to be an integral part of and supporting guidance. It also questioned the basis for best practice. It noted that the PSA has viewed other sectors, such as financial services, but that consumer expectations in these sectors are markedly different to those of consumers of phone-paid services and would not be a good basis for setting standards. It also said, as with guidance, best practice could be applied to all Standards but, in particular, with promotion of services, which seemed to be where most of the perceived issues lie.

143. ***VMO2*** said as the consultation on best practice would follow publication of the statement and Code 15, it could not comment on whether it agrees with the proposed approach or whether there are other areas in which best practice information could assist.

144. ***Vodafone*** made a number of comments relating to best practice, guidance and best practice. We have already summarised these at paragraph 103 above.

Level 1 providers

145. ***Donr Ltd*** said it was not clear about the distinction between best practice and guidance. It argued that, given the additional cost to create and maintain a repository of best practice, this was unwarranted when guidance could be made fit for purpose. It also argued that if we disagreed with this statement, charities would benefit from real-world examples of how PSA guidance can be followed. It argued that we should work closely with leading providers to establish these examples and update them regularly to reflect industry changes. It said that best practice should be a dynamic suite of documents that can keep pace with innovation, so that the PRS market is not left behind by other payment methods. It said examples of this are text giving, society lotteries and regular giving for charities.

146. ***Fonix*** agreed with our proposed regulatory approach relating to best practice information. It said it would need to see the proposed best practice documentation and requested the opportunity to input into any discussions around practical implementation. It is also noted there are already individual MNO codes of practice which at times are contradictory to each other and that any best practice guidelines should be reviewed and agreed with the MNOs to ensure consistency.

147. ***Infomedia*** said that it was a little unclear about the difference between guidance and best practice standards. It said it would make sense to combine these two elements together under the guidance category to reduce the challenge of having a multiplicity of different documents and sources of information to manage (both for the PSA and for service providers).

148. ***Mobile Commerce & Other Media Ltd*** said that the use of best practice information is implying that the Code is insufficient on its own and that additional information is required to enable people to comply with it. It argued good regulation would be a Code that stands alone and does not need additional, supplementary information to go alongside to ensure compliance.

149. ***One industry respondent*** said it is concerned that best practice information will create backdoor obligations with a blurred line between information and obligations. It also said it invited MNOs to require different forms of implementation creating a very confused value chain and risking inadvertent breach of either code or contract. It said if best practice information is intended to be an obligation it should be clearly stated as such and used sparingly.

150. ***Another industry respondent*** said that an updated sector specific guide and best practice for the charity sector would be helpful.

Broadcasters

151. ***One broadcast respondent*** said it hasn't seen any best practice information in order to make any evaluation. It argued that without the support of best practice, it is difficult to fully endorse the new Standards. It said it is also unsure whether best practice trumps guidance or vice versa (or neither).

152. ***Global*** did not agree with our proposed regulatory approach relating to best practice information. It said it is hard to understand what the difference is between guidance and best practice, particularly without seeing these in advance of Code publication. It repeated its view that this could lead to 'stealth tactics' to change regulation with little input. It also noted that best practice could feel subjective and may set consumer expectations higher than reality, causing undue confusion and therefore consumer harm, i.e. consumers not fully understanding the difference between best practice and coded regulation and thus what their rights are.

Trade associations

153. ***aimm*** did not agree with our proposed regulatory approach relating to best practice information. It said best practice had not been included in the document so it cannot be evaluated. It requested clarification on the difference between guidance and best practice and which takes priority. It asked whether consumer research has been carried out to inform best practice and, if so, it would be helpful to see this to consider whether this approach is sensible. It urged caution in using consumer expectations for phone-paid services which may be based on other payment mechanics. It also noted there are currently contradictions between MNO's codes and regulation and asked for assurance that the PSA, in taking this approach, were not creating a Code that clashes and works against existing satisfactory MNO's Codes of Practice.

154. In terms of other areas where best practice may be helpful, it said one of its members suggested that best practice could be visual examples of how services could be promoted to ensure consumers

understand their contents/price. Price was considered by this member to be an area where best practice would be useful and could be utilised to assist consumers greatly. It also noted that best practices can be at their most successful when worked on collaboratively and said it would be happy to collaborate with the PSA on best practice.

Charities

155. ***British Heart Foundation*** referred to its response to Question3 (see paragraph 121).

156. ***One charity respondent*** questioned whether the PSA were planning to gather feedback relating to usage and any issues which may necessitate Code 15 amends and/or further guidance on good practice in addition to that detailed in Annex 3 of the Consultation document.

157. ***Macmillan Cancer Support*** said it has concerns about blue chip companies, with significant resources, being able to implement costly state of the art systems and processes which are then deemed by the PSA to be 'best practice'. It argued that consideration should be given to SMEs and charities who may not have such resources at their disposal.

158. ***One charity respondent*** felt that charities would benefit from PSA guidance in future, specifically in relation to how the Code applies to running compliant campaigns, focusing on practical considerations.

159. ***RSPCA*** agreed with our proposed regulatory approach relating to best practice information. It argued all areas would be helpful in terms of best practice information.

160. ***Another charity respondent*** agreed in principle.

Consumer and consumer advocates

161. ***PSCG*** agreed with our proposed regulatory approach relating to best practice information but said it is concerned that providing such documentation doesn't overstretch the PSA to the point that essential consumer protection is ignored. In terms of other areas, it observed that complaint handling is a weak area for most phone-paid services.

PSA's assessment of inputs received

162. We note there was a mixed view in relation to best practice information. While some respondents were supportive and saw this as helping raise market standards by focussing on actions and behaviours that go beyond compliance with the Code, others did not agree. Of those which did not agree, some argued they did not feel able to comment without seeing the best practice information. Others were unclear of the difference between guidance and best practice information.

163. It is important to note that there is, in our view, a very clear distinction between the status of best practice information and guidance under Code 15. Guidance, as we have explained above, is about assisting providers in their compliance strategies under Code 15. It is very much drafted to support compliance with the Code and, therefore, it has a very clear role to play in terms of how providers comply with the provisions of the Code. Best practice information, as we set out in the consultation document, goes beyond compliance with the Code and is more to do with raising market standards in areas which the Code does not cover. Therefore, and in this context, we see the purpose and value of guidance and best practice information as being very distinct in terms of how they relate to the Code.

164. We note comments about the difficulty of commenting on best practice information without seeing it first. However, these are different questions. This consultation is about the principle of best practice information and whether stakeholders agree this may provide additional value in meeting consumer expectations in this sector and is something which could sit alongside the Code. However, our view is that in terms of developing the detail of any best practice information, we could only do this once the Code has come into force and, having considered stakeholder responses, we are able to confirm our proposed approach to best practice information.

165. We agree on the importance of collaboration in developing best practice information and can confirm that it is our intention to work closely with industry and consumer stakeholders to establish examples of best practice, including in updating them regularly to reflect consumer and industry changes.

Final decision

166. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 2.3 on our proposed regulatory approach relating to best practice information.

Supervision and verification

What we said (including questions asked)

167. In our consultation document, we said we want to move to a model which has an increased focus on verification and ongoing supervision, for the benefit of market health, integrity and reputation, and consumer confidence. We said our provisional view was that this would work as follows:

Enhanced notification through the registration scheme

168. We proposed to carry out checks on PRS providers through an enhanced registration system, which would enable us to collect and verify essential information about PRS providers and their services. We considered this should include, among various other requirements, information relating to relevant contact details of individuals in the organisation, relevant numbers and access or other codes as well as the identity of other providers involved in the provision of the service.

Strengthened DDRAC requirements

169. We proposed to put in place more stringent DDRAC requirements for all PRS providers in order to ensure that all such providers undertake thorough DDRAC in relation to all persons with whom they contract.

Supervision

170. We proposed to carry out supervisory activities for the purposes of:

- assessing a PRS provider's level of compliance with the Code
- enabling timely identification and resolution of issues
- proactively addressing any such issues
- reducing the risk of actual or potential harm to consumers arising from such issues
- ensuring that the PSA can take informed decisions in carrying out its regulatory functions.

171. We proposed to carry out these activities through a range of targeted compliance monitoring methods, including assessing complaints and other intelligence, audits, periodic reporting of data and information, targeted information-gathering, thematic reviews, skilled persons reports, engaging with PRS providers and conducting pre-arranged visits (by consent) to the premises of PRS providers.

172. Our provisional assessment was that our proposed new approach to supervision and verification would enable us to have a more comprehensive understanding of PRS providers and the services that are offered to consumers. This will help us better protect consumers by taking proactive regulatory action that is proportionate, efficient, timely, targeted, and effective.

173. We asked the following question:

Q8: Do you agree with our proposed regulatory approach relating to supervision and verification? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

174. *BT* agreed in principle with the broad supervisory objectives outlined in the consultation document, although it said it would welcome greater clarity on the PSA's proposed "light-touch approach". It asked the PSA to issue an approach document for its supervision framework similar to that published by the Financial Conduct Authority (FCA) which should clearly explain how the PSA will supervise in

practice; any risk or other frameworks which will be used for prioritisation and decision-making and the parameters for compliance monitoring and regular reporting.

175. In terms of market entry verification, it said it would like to see the PSA undertake a more proactive role in the validation of new market entrants to ensure barriers to entry are not too low and new providers meet their registration obligations under the Code. It said the PSA should also undertake "in-life" monitoring of the register, to ensure it is kept up to date which makes it easier for the providers in the value chain to better understand their customers, the services offered and associated risk profile. It also said the PSA should consider a review of its registration system to make it more user-friendly, especially in respect of large uploads of information.

176. In terms of DDRAC, it agreed with the DDRAC rules outlined, however said it is unable to comment on the entire framework until guidance is published. It said it would welcome formal confirmation of the PSA's current view that, while responsibility for DDRAC sits across the value chain, regulatory liability should be limited to those parties with a direct contractual relationship.

177. ***Telecom2*** said supervision and verification are necessary tools to use when preventing bad actors from entering the industry. It said it would like to see PSA undertaking initial verification of registrant's details and said that if registration is a simple box ticking exercise, then it has no real value. It also noted the intention to provide, among other things, timely regulatory action.

178. ***VMO2*** generally agreed with the regulatory approach relating to supervision and verification.

Level 1 providers

179. ***Donr Ltd*** agreed with our proposed regulatory approach relating to supervision and verification. Its preference was for this new approach to have time to bed in and then review after 6 -12 months.

180. ***Fonix*** agreed with our proposed regulatory approach relating to supervision and verification.

181. ***Infomedia*** fully supported our approach in principle and believed that "front-loading" verification in this manner, in a similar way to other financial services, is a robust way to seek to prevent market entry by unscrupulous actors who are not invested in the long-term viability of the carrier billing industry. It wanted to ensure that the approach is proportionate and not discouraging for new market entrants, particularly at the point of service delivery, with responsibility able to be adopted by other value chain partners.

182. ***Mobile Commerce & Other Media Ltd*** said the supervisory requirements would not need to be so stringent if the PSA did more to stop industry disruptors from entering the market. It was concerned that our proposed supervisory powers are onerous, not transparent and do not make compliance and regulation simpler and easier.

183. ***One industry respondent*** said that, if used properly and if the information can be shared and relied on by companies carrying out their own DDRAC then this is likely to be beneficial.

Trade associations

184. ***aimm*** agreed with an approach that prevents bad actors from joining the market, but it was sceptical about enhanced registration when the existing registration system is not entirely reliable and contains incorrect information. It agreed that the approach should be equitable and achievable for all levels of business, to encourage new business and innovation. It sought confirmation that the approach will also focus on PSA verification such as validating the details that are provided to them – so it is not just a tick box exercise. It said that it is generally supportive of an approach that strengthens DDRAC, however requested assurance that this requirement is also an obligation for app stores. It also questioned whether this approach has been costed out and sought assurance that it will not increase cost in an already commercially prohibitive regulatory environment.

Charities

185. ***One charity respondent*** welcomed the PSA's intention to maintain and improve market health, integrity and reputation and consumer confidence through enhanced supervision and verification. It also welcomed the PSA's intended approach of being supportive to providers to enable Code compliance, evidence-based and focusing supervisory activities where there is risk of consumer harms and being proportionate in its compliance monitoring activities.

186. ***Macmillan Cancer Support*** said it understood the reasoning behind the PSA's proposed approach to supervision and verification but that the consultation document needed to provide more detail on what an "enhanced registration system" might look like and how organisations can comply. In particular, it sought clarity in terms of how compliance would be assessed. It also referenced its response to Question 34 (see paragraph 846).

187. ***RSPCA*** agreed with our proposed regulatory approach relating to supervision and verification.

188. ***One charity respondent*** agreed in principle.

Consumer and consumer advocates

189. ***PSCG*** agreed that the proposed regulatory approach to supervision has the potential to protect against consumer harm. However, it also noted there is a danger that this becomes a "box ticking" exercise, wasting the time of both PSA and the service providers.

Others

190. ***One industry respondent*** said it is regulated by the FCA and is concerned to the extent that the two sets of rules will need to be kept compatible and non-conflicting.

PSA's assessment of inputs received

191. Respondents were generally supportive of our proposed new approach for supervision and verification. A number of respondents, in particular, welcomed the more stringent DDRAC requirements (draft Code paragraph 3.9). We also note that respondents sought clarity in relation to app stores. We cover this point fully at paragraph 533 later in this document. We also note the request to publish a supervisory approach document. We agree the need for additional clarity and certainty in relation to our supervisory activities and this will be considered as part of our published Procedures.

192. Some respondents and industry webinar attendees argued that the PSA needs to do more to verify the information we receive as part of registration and that the registration process needs to be reviewed to ensure the accuracy of information in the PSA register. As a matter of good business practice, we do keep the registration process under review. We also included more stringent requirements in the draft Code relating to the need to provide relevant information and keep it up to date. We deal with points relating to our approach to registration, and specifically, whether we should carry out greater verification in checking information, later in the document in responding to questions on the new Organisation and service information Standard.

Final decision

193. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 2.4 on our regulatory approach to supervision and verification.

Code compliance: engagement and enforcement

What we said (including questions asked)

194. We proposed to carry out engagement and enforcement activities to ensure that PRS providers comply with the Code. This included engaging with PRS providers to understand issues and trends in specific services, service types, sectors or the market in general. We also proposed to engage with PRS providers where we have concerns about compliance matters, including in relation to the Standards and/or Requirements. We said we wanted to do this by moving away from the current model of "Track 1" and "Track 2" procedures to a new structure which involves use of enquiry letters, warning letters and formal notification and enforcement notices. Our provisional view was that this would provide a much clearer overall structure of the engagement and enforcement routes open to us and provide a clearer framework around the informal resolution of issues or cases, which currently sits outside Code 14.

195. We asked the following question:

Q9: Do you agree with our proposed regulatory approach relating to Code compliance: engagement and enforcement? Please provide an explanation as to why you agree or disagree

Stakeholder comments

Network operators

196. ***BT*** agreed in principle with our proposals on engagement and enforcement and was supportive of the more streamlined approach leading to quicker decision-making and resolution. It said this would lead to better consumer outcomes. It added, however, that it would welcome greater clarity on how the PSA plans to use its extended investigative information gathering powers in a proportionate way.

197. ***Telecom2*** said, in general, the move to the proposed new structure was welcome if it provided clarity and a significant improvement in timescales. It said it would like to see limits on how long the PSA can take to perform investigations, and two months should be more than long enough in most cases as the majority are almost a yes/no situation. It also had concerns about the level of industry knowledge within the Tribunals and CAP members and said that being legally qualified and possibly a consumer champion is not enough.

198. ***VMO2*** broadly agreed with the proposed approach to Code compliance: engagement and enforcement.

Level 1 providers

199. ***Donr Ltd*** agreed with the principle of the concept. It noted the PSA had not provided any templates for proposed enquiry or warning letters, and so said it was not possible to comment on the detail of the proposal.

200. ***Fonix*** agreed with our proposed regulatory approach relating to Code compliance: engagement and enforcement.

201. ***Infomedia*** agreed with our proposed regulatory approach relating to Code compliance subject to its comments to Q10 (see paragraph 227).

202. ***Mobile Commerce & Other Media Ltd*** said while it welcomed a less formal approach to some elements of regulation, it believed the PSA could abuse these powers by not including a limit within which these powers can be used. For example, by setting out that only so many enquiry or warning letters can be issued in a certain timeframe.

203. ***One industry respondent*** said that while they agreed there was a need to overhaul the engagement and enforcement process, they did not believe the proposed approach achieves that. They said it seems to overlook aspects of process that are standard in most enforcement processes, including having no limitation period, creating requirements that could breach data minimisation principles, no time frames on investigations and risking unscrutinised subjectivity in investigations and decision making.

Trade associations

204. ***FCS*** supported our proposed regulatory approach.

205. ***aimm*** did not agree with our proposed regulatory approach relating to Code compliance: engagement and enforcement. It noted that while there is a clear process in place for industry, it is disappointed that there is no service level agreement of any kind mentioned as being applicable to the PSA. It also sought assurances about the level of skill that will be held by the proposed single person CAP and would like visibility of the analysis of qualifications/industry experience and knowledge held by the individuals concerned which led to this approach. It also queried whether this process would save time, in terms of administrative burden on both the PSA and industry and asked for visibility of the impact assessment carried out in this area to inform this approach. It was also disappointed that the PSA have decided not to take on board any "lessons learned" from the research carried out by aimm (through Fladgate) on the state of regulation in various territories. In particular, it said it would have been encouraging to see a streamlining and shortening of the investigatory process through better stakeholder engagement.

Charities

206. ***Macmillan Cancer Support*** said that, on the whole, it did agree because it recognised the value of having a more proactive regulatory system in place for the industry. It did say that it is not clear whether a breach of the guidance or potential code breaches would trigger warning letters.

207. ***RSPCA*** agreed with our proposed regulatory approach relating to Code compliance: engagement and enforcement.

208. ***One charity respondent*** agreed in principle.

Consumer and consumer advocates

209. ***CCP and ACOD*** agreed with our proposals to increase the effectiveness of existing enforcement powers.

210. ***PSCG*** agreed with this approach. It noted that, where a provider fails to co-operate, the PSA need to move quickly to enforcement. It also said that PSA should publish details of enforcement notices in the interests of transparency.

PSA's assessment of inputs received

211. The vast majority of respondents agreed with our proposed approach to Code compliance: engagement and enforcement. We welcome this. We also note, however, that there were a number of specific queries which were raised in terms of the level of detail about how the approach is likely to work in practice.

212. In relation to the queries about streamlining and shortening of the investigatory process (and providing certainty on the PSA's timescales for carrying out investigations), these are issues which we will pick up in our published Procedures which we will develop during the implementation period. We do not agree that this should be covered under the Code. A key objective of our proposed new approach under Code 15, is to resolve issues quickly and informally before progressing to formal enforcement. It is important to note that a number of our proposed new amendments to our enforcement processes, including enhanced settlement, strengthening our information gathering powers and establishing a more efficient adjudicative regime, have been designed with these outcomes in mind.

213. We also do not agree with comments that these provisions could lead to the PSA abusing its powers. Indeed, we consider the draft Code is very clear and transparent in this regard and includes sufficient safeguards to prevent any potential abuse of powers. In addition, our published Procedures will also provide further clarity and certainty by clearly defining the PSA's procedures relating to engagement and enforcement.

214. We also note aimm was disappointed that we did not take on board lessons learnt from its Fladgate research. As we set out in the consultation document, we did carefully consider this research but our assessment was that the research and the conclusions drawn from it, did not take sufficient account of the UK's legislative framework, which effectively precludes a self-regulatory approach. It also assumes more co-operative relationship between the regulator and merchants who are subject to formal investigation which has not been our experience to date.

215. We also note aimm's request to see the impact assessment in relation to this proposal. Our impact assessment can be found at Chapter 9 of this statement.

Final decision

216. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 2.5 on our proposed regulatory approach relating to Code compliance: engagement and enforcement.

Tailored approach to regulation

What we said (including questions asked)

217. We proposed that Code 15 provisions will apply to all PRS providers unless an alternative approach to achieving compliance is agreed with, or proposed by, the PSA.

Bespoke permission

218. We said that where PRS providers demonstrate to our satisfaction that they are able to achieve any of the objectives of the relevant Code provision(s) through means other than strict adherence to such

provision(s), we would consider granting permission in writing for the alternative means to be used. We also said that granting of such permission may be subject to conditions which we would agree with the provider and which might include for example enhanced reporting requirements. We also said where we look to grant such bespoke permission, we would publish certain information on our website, prior to the permission taking effect.

General permission

219. We said where we consider, following consultation, that any requirement or other obligation in any other part of this Code can be met by means other than strict adherence to these requirements or obligations, we would consider granting permission to all relevant PRS providers by issuing a notice which sets out certain details relating to this general permission, including who the notice applies to, what the alternative means are, the relevant provisions of the draft Code and any relevant conditions which we would attach to the use of the alternative means.

220. We also said that, following on from the publication of our statement on Code 15, we would set out through a published notice the existing permissions under Code 14 that will continue to apply under Code 15. We also intended to set out a list of exemptions published under the current registration provisions of Code 14 that will also continue to apply under Code 15 for the purposes of the Organisation and service information Standard and Requirements.

221. We asked the following questions:

Q10: Do you agree with our proposal to tailor our approach to regulation, including introducing bespoke and general permissions as part of the draft Code? Please provide an explanation as to why you agree or disagree.

Q11: Do you have any comments about the existing permissions and exemptions under Code 14 and/or our proposed approach to ensuring certainty and clarity on their status under Code 15?

Stakeholder comments

Network operators

222. ***BT*** stated that it has no objection to the use of bespoke and general permissions. It said it agrees with the PSA's plans to:

- publish details of any bespoke permission prior to it coming into effect,
- provide notification of the applicability of any general permissions for providers. It sees this as a helpful way of ensuring market players understand the standards expected of them.

It welcomed the PSA's intention to set out those existing Code 14 permissions and exemptions which will continue to apply under Code 15.

223. ***Telecom2*** said it is wary of this approach as general and bespoke permissions risk drifting away from standards and so devaluing them. It said there has to be clear information as to why the permissions have been granted, how they support the standards and with bespoke permissions and why the specific providers have qualified for those permissions. It did not want larger providers with more influence to be given permissions that are then denied to smaller providers operating in the same way. In terms of Q11, it said certainty and clarity are definite requirements for granting permissions but said that it cannot comment further without more information on how this is to be achieved.

224. ***VMO2*** agreed with the importance of flexibility regarding regulation through bespoke or general permissions but noted this could potentially cause confusion for some services or service categories, if dealt with on an individual basis.

Level 1 providers

225. ***Donr Ltd*** agreed with this in principle albeit noted that there is no indication of the process to request bespoke permission or what would be considered a suitable request. At a minimum, it argued that the approval process should take no longer than 30 days, be fully published when granted and should be considered easily obtainable, i.e. by following a simple application process.

226. It believed that all charities should be exempt from registering with the PSA, and should be granted an exemption under Code 15, much like app store developers have an exemption with a particular app store. It noted that charities are registered with the Charity Commission and regulated by the Fundraising Regulator. This should provide regulatory comfort they have been sufficiently verified. It said that by removing the extra administrative work of registering with the PSA, phone-paid services would be more attractive to smaller charities and that excessive paperwork would be removed for what is sometimes quite small sums raised (e.g. £50) by a charity.

227. ***Infomedia*** agreed with the bespoke permissions proposal. It raised concerns about general permissions and argued that it creates a separate category of document, in addition to guidance, best practice and the Code itself. It said that if the PSA considered that a matter is suitable for a general permission then this should be brought into the Code itself, being a set of specific rules.

228. ***Mobile Commerce & Other Media Ltd*** agreed bespoke and general permissions are an important part of the Code and industry. It said regulation around this point must be clear, easy and simple to follow, which the PSA appears to have done. It welcomed these changes, but that this is only on the basis that the PSA ensures that the permissions are published and that this section of their website is kept current and up to date.

229. ***One industry respondent*** said that while bespoke and general permissions make sense as a concept, this is an example of where confusion may exist as to whether these regulations are truly standard based or will include outcomes-based processes. They said that they cannot comment in detail without seeing proposed drafting. They also said in its experience of other markets, the exemptions are very clear and tend to be based on industry sectors that may be lower risk or need to operate differently. For example, charities that receive repeat donations should not necessarily be considered in the same way as a company providing a subscription service for certain requirements under the Code. The existing approach does not give that level of certainty and creates a risk of misinterpretation.

Broadcasters

230. ***Global*** did not agree with our proposal to tailor our approach to regulation. It said that having different rules and regulations for different parties based merely on who that organisation is, could become very confusing for both industry and consumers as there is no definitive permission.

Trade associations

231. ***FCS*** supported our proposal to tailor our approach to regulation.

232. ***aimm*** said it was surprised by this approach and unsure of its value in a standards-based Code. It said the downsides of an outcomes-based Code have been put forward by the PSA, and permissions that deviate from the Code because they meet the same outcomes feels like it could be counter-intuitive. It said the need for clarity is absolute – and industry must be clear on what exemptions have been granted and why, to avoid monopolisation by bigger brands who use their reputation to push exemptions that smaller businesses cannot benefit from. It said that, as these permissions cannot be assessed as they are not available for scrutiny, it could not agree or disagree with this approach.

233. In terms of Q11, it said certainty and clarity must be achieved by being totally transparent for every example of permissions including who they have been granted to and how that decision has been reached. Without having assurance on this level of detail in advance members cannot agree or disagree with this approach.

Charities

234. ***RSPCA*** supported our proposal to tailor our approach to regulation so long as it is consistent within the same sector/industry. It did not have any comments about the existing permissions and exemptions regime.

235. ***One charity respondent*** agreed in principle.

Consumers and consumer advocates

236. ***PSCG*** disagreed with our proposal to tailor our approach to regulation, including introducing bespoke and general permissions. It argued that such arrangements have a history of causing consumer harm. It noted the Mob Bill Tribunal adjudication is one example of this where the PSA agreed that it could

operate a "single-click model" which did not comply with the Code in force at the time and resulted in consumer harm.

237. In terms of Q11, it commented that it would be better if all services were required to comply fully with the Code. It argued that, where necessary, the Code should be amended to allow for innovation, but only after proper consideration of the need to protect consumers.

Charities

238. ***RSPCA*** supported our proposal to tailor our approach to regulation so long as it is consistent within the same sector/industry. It did not have any comments about the existing permissions and exemptions regime.

239. ***One charity respondent*** agreed in principle.

PSA's assessment of inputs received

240. We note there was a mixed response in terms of this proposals, albeit the majority of respondents were supportive of incorporating a more tailored approach to regulation under Code 15.

241. Of those who were not supportive, we do not agree with the comments that our proposed approach to include bespoke and general permissions within our regulatory approach is incompatible with a standards based approach; this is because the Standards would still need to be met as a condition of granting a permission. Nor do we agree that the permissions regime will unnecessarily favour larger providers. Permissions criteria are not designed to favour any specific provider(s), all providers would be equally able to apply for bespoke or general permissions and we will consider all applications equally and fairly.

242. We also do not agree with the comments that there is an added level of confusion if permissions are dealt with on an individual basis. We consider it is important to retain this level of flexibility and be able to engage with providers on an individual basis, where that provider is able to demonstrate that it can achieve compliance by alternative means. We have also explicitly stated in the Code that where we grant bespoke permission, we will publish certain information on our website, prior to the permission taking effect. So our approach will be one of full disclosure and transparency of any bespoke or general permissions, subject to confidentiality requirements.

243. We note the comments made by PSCG but do not agree that the permissions and exemptions regime has led to consumer harm. In relation to the specific case referred to, it is not the case that the PSA granted a bespoke permission or exemption to Mob Bill UK Ltd. We continue to believe that the increased flexibility that can come from being able to agree bespoke and general permissions remains an important objective of Code 15.

244. We also note comments that charities should be exempt from registering with the PSA and should be granted an exemption under Code 15. It is not clear to us that charities should be exempt from registration with the PSA. As we discuss later in this document, (see paragraphs 688 - 689) there are clear differences in terms of how consumers engage with, and are protected in relation to, charities more generally, and those charities which offer phone-paid services.

Final decision

245. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 2.6 on our tailored approach to bespoke and general permissions.

Prior permissions

What we said (including questions asked)

246. We proposed to retain the existing prior permissions regime within the draft Code that will enable us to require particular categories of service to only be provided with prior written permission from us. We proposed to give reasonable notice of any such requirement and the category of service to which it applies. We also said we would publish a full list of such service categories on our website from time to time. In deciding whether to apply prior permissions, we said we would take account of all relevant factors including the compliance record of the relevant PRS provider. We also proposed that it

should be open to PRS providers who have applied for prior permission and are not satisfied with our determination, to apply to the chair of the CAP for a review of the determination.

247. We asked the following question:

Q12: Do you agree with our proposed regulatory approach to prior permissions? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

248. ***BT*** said it has no objection to the PSA's retention of the existing prior permissions regime in the new Code. It agreed the PSA must give reasonable notice of any prior permission granted and the category of service to which it applies. PSA should also publish a list of such service categories on its website, perhaps every three months or earlier if required.

249. ***Telecom2*** said it does not see any advantage to be gained by having a prior permissions regime if the Standards and advice combined with good verification of providers on registration and effective DDRAC are all in place.

250. ***VMO2*** broadly agreed with the proposal to continue the existing prior permissions regime under Code 15.

Level 1 providers

251. ***Donr Ltd*** said that through the use of special conditions, a society lottery has been classed as "high risk" and therefore requiring launch notification. It said it considered this to be a form of prior permission and under scope for this question. It argued that society lotteries do not cause harm and should not be considered "high risk". It, therefore, suggested this should be removed from any notification requirements or prior permission. It said that the Gambling Commission is best placed to regulate such activities and that the PSA should not interfere with the processes the Gambling Commission have in place for society lotteries.

252. ***Fonix*** agreed with our proposed regulatory approach to prior permissions.

253. ***Infomedia*** said it had no concerns with the existing prior permissions regime but hoped the new supervisory approach will be strongly considered as an accelerating factor in any requests for decisions. It welcomed the proposal for a right of independent review of decisions as a good practice for any exercise of quasi-judicial rights.

254. ***Mobile Commerce & Other Media Ltd*** said requirements in relation to prior permission do not have any timelines associated with them. It argued that timelines should be included so that the permission must be considered and a decision made on them within a set timeline, and not just left open for the PSA to review.

255. ***One industry respondent*** said that, if implemented properly, this could be advantageous but without more detail it struggles to understand what is achieved here.

Trade associations

256. ***FCS*** supported our proposed regulatory approach to prior permissions.

257. ***aimm*** felt that this is another "add-on" which the PSA suggest they are trying to move away from. With Standards, Requirements, guidance, best practice and prior permissions, it wondered if any time or resource would be saved with this proposal.

Charities

258. ***RSPCA*** supported our proposal.

Consumers and consumer advocates

259. ***PSCG*** did not agree with our proposed regulatory approach to prior permissions. It argued that if it was

desirable to allow a service to operate which fails to comply with the current Code, changes to the Code should be properly consulted. It felt this would allow proper consideration of the potential for consumer harm which it felt has been lacking in the past, although it recognised that this has potential to delay the implementation of such services.

PSA's assessment of inputs received

260. Respondents were broadly supportive of our proposal to retain the prior permissions regime under Code 15.

261. In terms of respondents who were not, we do not agree that our suggested approach to prior permissions is an "add-on" and inconsistent with the broad objectives of Code 15. This provision is already well-established in Code 14 and we are simply retaining it under Code 15. We also continue to believe it provides an important consumer protection safeguard where, in our view, certain categories of services, may require prior permission to operate. We also note the comment in relation to adding timescales but do not agree that it is desirable within the Code to specify a single timescale since what an appropriate timescale is may vary across different service categories. We also note the comment in relation to society lotteries but can confirm that this is not an example of a prior permission.

Final decision

262. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 2.7 on our proposed regulatory approach relating to prior permissions.

5. Regulatory Standards and Requirements

Introduction

263. In this section, we describe the overarching regulatory Standards, and detailed supporting Requirements which will form the basis of our new regulatory approach, taking account of stakeholder comments received. As described in section 4, we are introducing seven consumer-focused Standards and three organisational Standards. These are as follows:

Consumer-focused:

- integrity
- transparency
- fairness
- customer care
- vulnerable consumers
- consumer privacy
- prevention of harm and offence.

Organisational:

- organisation and service information
- DDRAC
- systems.

Integrity Standard

Standard

Organisations and individuals involved in the provision of PRS must always act with integrity and must not, in respect of any part of their provision of PRS, act in a way that brings or might bring the PRS market into disrepute.

Rationale

This Standard aims to ensure that providers act in a manner that supports the integrity and orderly functioning of the phone-paid services sector, observe proper standards of conduct, and uphold the reputation of the market at all times. This helps to build consumer trust in the phone-paid services sector and ensures that consumers are well served by a healthy market that is innovative and competitive and works in their interests.

Background

264. Under Code 14, there are a number of general responsibilities which apply to providers of phone-paid services and which set out various roles and responsibilities relating to their role in helping to support PSA regulation. These include, among others, the following responsibilities:

- to ensure that the PSA regulation is satisfactorily maintained by taking all reasonable steps to meet the requirements of the Code and to carry out their obligations promptly and effectively, including ensuring that all consumer complaints are handled quickly and fairly (paragraph 3.1.1)
- having regard to the funding provisions of the Code and to comply with such provisions where so required (paragraph 3.1.2)
- not engaging or permitting the involvement of an organisation or individual in the provision of PRS in respect of whom a sanction has been imposed and published (paragraph 3.1.5).

Consultation proposals

265. We proposed to introduce a new Integrity Standard to establish a clear expectation that providers must act with honesty and integrity at all times. We proposed that this Standard would incorporate a number of existing general responsibilities from Code 14, namely Code paragraphs 3.1.1, 3.1.2 and 3.1.5 (as described above).

266. We proposed to include the following new Requirements under this Standard:

- that PRS providers must act honestly at all times in all their interactions with consumers and the PSA (draft Code paragraph 3.1.1)
- that PRS providers and associated individuals must not bring the PRS market into disrepute by being involved, whether knowingly or recklessly, in arrangements which breach any of the provisions of this Code (draft Code paragraph 3.1.2).

267. We asked the following questions:

Q13: Do you agree with our proposed Integrity Standard and Requirements? Please provide an explanation as to why you agree or disagree.

Q14: Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

268. ***BT*** were supportive of this new Standard and considered the Standard and Requirements central to upholding the reputation of the market. It said it was particularly supportive of draft Code paragraph 3.1.1 in terms of codifying honesty for all PRS providers in all interactions with the regulator and consumers, and the PSA should consider extending this Standard to interactions between all PRS providers.

269. It also agreed with the Requirement not to bring the PRS market into disrepute and agreed that extending the criteria to include acting "recklessly" is appropriate in respect of negligent action which might lead to poor conduct and cause harm as a result.

270. ***Telecom2*** said acting with integrity is simply good business practice if a provider is to retain the trust of consumers and stay in business so it broadly agrees with the Standard. It also broadly agreed with our assessment against the general principles but did have concerns about drawing on the FCA requirements.

271. It said it had concerns about the PSA's Requirements when it comes to identifying providers who have been sanctioned and questioned, for example, how far back a provider would be expected to look.

272. ***VMO2*** agreed with the proposed Integrity Standard and Requirements and our assessment against the general principles.

Level 1 providers

273. ***Donr Ltd*** had concerns that the Standard is an open-ended statement, with key phrases undefined. For instance, it argued that acting "honestly" can mean a page containing all necessary information is shown but key terms are obscured. Furthermore, it noted that "interactions" is undefined and the meaning could be skewed by bad actors. It agreed with our assessment against the general principles.

274. ***Fonix*** agreed with both our proposed Integrity Standard and Requirements and our assessment against the general principles.

275. ***Infomedia*** agreed with the concept of Integrity as a Standard and the proposed Requirements. However, it was concerned with the use of the wording "might bring" in the Standard. It argued this introduces a significant degree of subjectivity into an already subjective concept of 'reputation'. It suggested that this wording could be made more certain such as "is highly likely to bring market into

disrepute". It felt this sets a clearer test to meet in the event of enforcement while not discouraging innovation within the marketplace.

276. ***Mobile Commerce & Other Media Ltd*** said while the standard is itself clear and easy to understand, along with the Requirements, it seems to follow the basis of outcomes-based regulation. It said it seems that the code is confused about what it is meant to be. It noted in the PSA's rationale for this Standard, it is stated "observe proper standards of conduct". It sought additional clarity as to what this meant.

277. ***One industry respondent*** agreed with our proposed Integrity Standard and Requirements. It noted that this is an example of where PSA support is very important.

Trade associations

278. ***aimm*** agreed that integrity is of the upmost importance for maintaining consumer trust in the market and generally agreed with the proposed Standard. It did, however, seek clarity on what is deemed reasonable to ensure compliance with draft Code paragraph 3.1.4 in terms of what lengths are providers expected to go to and how far back historically they are to investigate. It also noted that, with regards to draft Code paragraph 3.1.4, the PSA must ensure that sanction information is correctly associated with the provider in question.

279. It agreed with the assessment of the proposed Integrity Standard against the general principles. It did, however, seek assurance that the industry burden will not be increased - and as such become disproportionate – due to the level of work required to ensure compliance with draft Code paragraph 3.1.4.

Charities

280. ***Macmillan Cancer Support*** welcomed and supported these proposals because it recognised the importance of providers conducting their services with integrity to build and increase consumer trust and confidence.

281. ***RSPCA*** agreed with our proposed Integrity Standard and Requirements. It did not agree with our assessment of the Integrity Standard and Requirements against the general principles and highlighted its response to questions to 17 and 18 (see paragraph 451 below).

282. ***One charity respondent*** agreed in principle.

Consumers and consumer advocates

283. ***PSCG*** agreed that the integrity of participants is essential to improving consumer confidence in Phone-paid Services. It argued that the Integrity Standard is somewhat subjective and expressed concern that under draft Code paragraph 3.1.2 providers have to act "knowingly or recklessly" to breach the Code. It cited examples of lack of due diligence when onboarding new services and believed that it was important to make clear that a failure to properly assess such business partners will be considered "reckless".

284. ***PSCG*** agreed with our assessment of the Integrity Standard and Requirements against the general principles.

PSA's assessment of inputs received

285. Stakeholders were broadly supportive of our proposed Integrity Standard and Requirements, and there was agreement that this is critical in terms of upholding the reputation of the market.

286. Some stakeholders expressed concern about the degree of subjectivity, and the lack of clear definitions, of some of the terms used, including terms such as "acting honestly" and "interactions". We don't agree and consider that these terms are clear as to the purpose behind them and do not need additional clarification.

287. We also note one stakeholder expressed particular concern about the use of the wording "might bring" and said it was unclear how this would be measured and consequently enforced and that using "is highly likely to bring market into disrepute" would provide more certainty. We agree with this comment and, consequently, we are amending the wording. On balance, we consider that "is highly likely to bring" is too high a test for the purposes of the Standard and we are, therefore,

modifying the wording to "is likely to bring". We consider this will provide greater certainty in terms of the purpose behind this provision.

288. In terms of requested clarity regarding providers' checks relating to draft Code paragraph 3.1.4, and not engaging with PRS providers and/or associated individuals in respect of whom sanctions have been imposed, our expectation is that providers need only carry out a check against the PSA website which provides full details of all relevant sanctions which have been imposed against PRS providers and/or associated individuals.

289. Finally, we note one respondent argued that it is important to be clear that a failure to properly assess business partners should be considered "reckless". In this context, we would note that we have introduced a new DDRAC Standard which is intended to clarify our expectations in relation to DDRAC and which will help ensure that due diligence is carried out consistently and to a high standard, including effective risk assessment and control processes. In light of this, we do not consider that additional changes in relation to the term "reckless" are necessary in respect of our proposed Integrity Standard and Requirements.

290. We received relatively few comments in relation to our assessment of the proposed Integrity Standard and Requirements against the general principles but those responses we did receive were broadly positive.

Final decision

291. Having considered stakeholders' comments, we have decided to implement the proposals set out in relation to our proposed Integrity Standard and Requirements (draft Code paragraph 3.1), as set out in our consultation document, with one revision. In light of comments received, we are changing the wording of the Standard by replacing "might bring" to "is likely to bring".

Assessment framework

292. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Integrity Standard and Requirements against the general principles which we set out in the discussion document. In light of comments received, we have decided to modify the proposed wording relating to the issue of bringing the market into disrepute, changing it from "might bring" to "is likely to bring".

293. Having done so, we consider that our new Integrity Standard and Requirements meets these tests, as we set out below:

- **effective** as they are designed to build consumer trust in the phone-paid services market and act as a deterrent to more disreputable providers. The changes aim to ensure that consumers are well served by a healthy market that is innovative and competitive and works in the interests of consumers. We consider that improving the performance of the industry in relation to honesty and integrity will improve the industry's reputation. We also note that ensuring market participants act with integrity is an important aim in other regulated markets such as the financial services market.[2] We note that one respondent raised a concern about drawing on FCA requirements which for the avoidance of doubt we can clarify is not our intention here.

- **balanced** as our view is that acting with honesty and integrity is critical for efficient, well-functioning markets that deliver good outcomes for consumers. This is vital to the overall reputation of markets as it drives consumer confidence and trust in markets which helps the phone-paid services market by supporting growth. It will benefit firms through enhancing the reputation of the industry as a whole which in turn should lead to healthy innovation and consumer choice by attracting an increasing number of reputable firms delivering good products to enter the market.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled PRS, as defined in the PRS condition set by Ofcom under section 120 of the Act. The Code does not make any changes which will lead to some

2 The FCA, for example, have a 'Senior Managers and Certification Regime (SM and CR)'. The regime aims to strengthen individual accountability in the regulated firms and raise standards of professionalism, conduct and governance.

parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code 15.

- **proportionate** as they should not unnecessarily increase the regulatory burden as we would expect that all firms operating in this sector should already be acting with honesty and integrity. For the vast majority of providers, this new Standard will not impact significantly in terms of how they already operate. In particular, we note that the majority of Requirements under this Standard are largely drawn from a number of existing general responsibilities from Code 14. The new Standard and Requirements will simply set out what is expected from phone-paid service providers in a way that can be easily understood by both consumers and providers.

- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above, and the effects of the changes are clear on the face of the new Standard. We, therefore, consider that the Code and this accompanying statement clearly set out to industry the Requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Transparency Standard

Standard

Consumers must receive full and clear information to enable them to make fully informed decisions when purchasing phone-paid services.

Rationale

This Standard aims to ensure that the entire phone-paid service process from service promotion to service exit, including service proposition and cost, is clear and transparent, so that consumers can make fully informed decisions, before any charge is incurred.

Background

294. Under Code 14, the Outcome relating to "Transparency and pricing" (Outcome 2.2) states:

> "That consumers of PRS are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made."

295. This Outcome is supported by a number of rules. These rules focus on the transparency of all information likely to influence the consumer's decision to purchase, including that pricing information should be prominent and proximate to the means of access to the service. There are also transparency rules relating to accessibility of information, including the name of the provider and their contact details.

296. There are various special conditions which set out specific requirements relating to transparency dependent on service type including subscription services, online adult services, online competition services, and ICSS. These cover a range of different issues, including clear information about the service on offer, the purchasing environment/distinctive points of purchase, pricing and receipts.

297. In addition, there is published guidance on promoting phone-paid services which can be applied to all service types.

Consultation proposals

298. We proposed to introduce a Transparency Standard which we said would build on the current Code 14 "Transparency and Pricing" Outcome and Rules, as well as a number of special conditions, including subscription service, online adult services, online competition services, recurring donations, society lotteries, directory enquiries and ICSS.

299. The new Requirements we proposed to include under this Standard were as follows:

- placing responsibility on merchants for ensuring that third parties contracted to carry out promotional activities comply with the Standards and Requirements

- requirements for the point of purchase to be clearly separate and distinct from promotional material and other aspects of the service

- receipts to be sent to consumers who purchase services over mobile using non-voice-based services after initial sign-up and each subsequent transaction
- methods of exit to be simple and should include the same method as sign-up, where possible.

Promotion - third-party marketing

300. To tackle the issue of non-transparent third-party marketing, we proposed a new Requirement for merchants to have ultimate responsibility for ensuring that any third parties they contract with to carry out promotional activities on their behalf comply with the Standards and Requirements.

Point of purchase

301. We proposed a number of new Requirements relating to the point of purchase which apply to all phone-paid services. These were based on special conditions which are currently in place for some services, including:

- the point of purchase must be clearly signposted and distinguishable from other aspects of the service
- the obligation to pay must be clear and consumers must explicitly acknowledge the obligation
- consumers are made aware of the associated costs directly before they commit to the purchase
- that the charge will be added to the consumers' phone account.

302. These requirements were introduced for subscription services in 2019. Our commissioned research for the purpose of the subscriptions review found that ensuring consumers are fully aware when they are leaving a promotional environment and about to make a purchase is critical to building consumer awareness of and confidence in phone-paid services.

303. With regards to voice-based services, and ICSS in particular, we said we continue to see a consistent level of consumer complaints whereas complaint levels for other phone-paid services have been falling. The ICSS complaints we receive demonstrate that consumers are very often completely unaware that they have purchased a service. To address this issue, we consulted on applying the point of purchase Requirements listed above to all services including voice-based services. Currently, these requirements only apply to certain service types which are not voice-based. We said this should ensure that consumers are fully aware when they are entering a purchasing environment and their expectations are met. Our intention was that, coupled with the proposed new promotional Requirements (above) and sign-up Requirements (discussed below), these Requirements would work together to effectively prevent consumers from unwittingly purchasing phone-paid services.

Use of service

304. We proposed two Requirements which were based on current Code 14 provisions and special conditions which address service usage. These were as follows:

- consumers to be notified upon connection when calls are recorded or monitored
- voice-based services that connect consumers to other organisations must clearly state the cost of continuing the call plus that it attracts the phone company access charge as well before onward connection.

305. Notifying consumers when calls are being recorded or monitored is generally a legal requirement. We currently only explicitly reference the requirement to notify consumers within special conditions for live entertainment services. However, we recognise that there can be various types of voice-based services that record or monitor calls. Accordingly, we proposed to codify this requirement to reinforce its importance.

306. We also proposed to require pricing information before onward connection. This is based on current special conditions for ICSS and directory enquiry services. Evidence from consumer complaints demonstrates that consumers can often experience "bill shock" when using services that connect to other organisations. This reinforces the importance of ensuring consumers are reminded of the cost of continuing the call so that they are able to make an informed decision to continue or not.

307. We did not propose to go further and require a free pre-call announcement for ICSS which required the full cost before any charge was incurred. In light of feedback received, it was not clear to us that this was something that would be technically feasible for all providers to implement.

Receipting for mobile network consumers

308. We proposed a new Requirement for receipts to be sent to consumers who have purchased any non-voice-based services after the initial charge and after each subsequent charge. We proposed that receipts include the following information:

- service name
- name and contact details of provider responsible for customer care
- amount charged
- how to exit if applicable (subscription services).

309. We currently require receipts to be sent for all subscription services, and some other services such as society lottery services. However, we noted that sending receipts for all purchases would bring phone-paid services in line with other payment methods (digital and otherwise) and ensure that consumers have a record of each purchase made. This also aligns with feedback received from the PSA Consumer Panel as part of the subscriptions review about the importance of consumers receiving a receipt or payment notification after any charges.

310. Taking this into account, we proposed the following new Requirements:

- that merchants ensure following a consumer's initial sign-up to the service, and after each subsequent transaction (where the service is recurring), the consumer promptly receives a receipt, at no additional cost to the consumer
- that receipts must set out the name of the service, customer care contact details, the amount charged and billing frequency (if applicable), and clear instructions on how to exit (if applicable)
- that receipts must be either an SMS sent to the consumer's phone or an email sent to the email address the consumer has provided as part of the sign-up process (where applicable) and in a format that can be easily retained.

311. We did not propose to apply these Requirements to voice-based services on the basis that we did not believe it would be practical to send a receipt to a handset – mobile or landline – following completion of a call. In this scenario, records of calls made are more easily obtained and can be more easily verified through call logs and phone bills.

Method of exit

312. We proposed to update current Code provisions regarding method of exit from a service. We proposed that there are simple methods of permanent exit from services in place and that this should include the same method used by a consumer to sign up to a service, or the same method of access to the service, where it is possible to do so.

313. We asked the following questions:

Q15: Do you agree with our proposal to introduce a new Transparency Standard? Please provide an explanation as to why you agree or disagree.

Q16: Do you agree with our assessment of the Transparency Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

314. *BT* agreed that that there should be appropriate oversight of marketing affiliates and they should be contractually bound to comply with the PSA Code (draft Code paragraph 3.2.5).

315. In respect of voice-based services, particularly ICSS, it raised concerns that the proposed transparency rules will not protect consumers from harm because of tendencies (particularly with smartphone users due to the operating systems, click to call functionality and device size) to bypass key information. It also said, in respect of the point of purchase explicit acknowledgement of the obligation to pay by consumers, the PSA should provide further clarification on how the mechanic will operate and how it will address the risk of uninformed consent.

316. It noted that in the PSAs view, free pre-call announcements for voice services are not technically possible for all network operators to introduce. It commented that if it is the case that a small number of providers are unable to update their systems to include a free pre-call announcement for ICSS, then further discussion in respect of how industry could help facilitate those other operators deliver such a solution would be recommended.

317. It suggested in respect of the Transparency Standard, that the PSA should test the effectiveness of the proposed rule in a controlled environment with consumers. In the event the requirement does not adequately protect consumers from harm, then it would strongly encourage cooperation with Ofcom and DCMS to evaluate further options to address this issue, in advance of introducing the new rule.

318. Overall, it agreed transparency across the entire customer journey is important but noted that third-party affiliates and merchants may require greater support to comply with the Code. It stated evidence from its compliance sampling shows promotional flows which do not meet the standards it expects to be achieved.

319. It reiterated its view that the Transparency Standard will not tackle the harm caused by ICSS as consumers are generally unaware they are using this type of service, resulting in an outcome which amounts to uninformed consent. It therefore stated that it believes the proposed Standard does not meet the PSA's assessment criteria of being effective and transparent.

320. ***Telecom2*** said it is clear that transparency is vital for consumers to fully understand at least the basic terms and conditions for any service they take and how to contact customer services, so a Transparency Standard is a good addition. It noted draft Code paragraph 3.2.5 places obligations on providers that would consume large amounts of resource and make many low-cost services uneconomic to operate. It said it already has this provision in its contracts, but large-scale monitoring would be impractical. It said it is unclear about draft Code paragraph 3.2.6 and would like more information about how and when it would occur. It also said that draft Code paragraph 3.2.8 is technically impossible for voice services to implement.

321. In terms of our proposed assessment against the general principles, it said it was not effective as some of the requirements are not technically possible and holding providers liable for the behaviour of all the parties they contract with is not viable. It said it is potentially unbalanced, in particular, the inclusion of draft Code paragraph 3.2.8 will make it impossible for voice services to be compliant. It also said it is not fair and non-discriminatory as there is a clear difference of approach, whereby voice services are exempted from the receipting issues on technical grounds but not exempted from draft Code paragraph 3.2.8 even though the same grounds apply. It also said it is not proportionate, in particular, draft Code paragraph 3.2.5 which will cause a large increase in the regulatory burden, particularly on small providers and draft Code paragraph 3.2.8 is also disproportionate as it is not possible for voice services to comply.

322. ***VMO2*** agreed with the proposed Transparency Standard and Requirements and our assessment against the general principles. In particular, it welcomed providing further clarity for customers to make fully informed decisions when purchasing PRS. However, it noted that both Transparency Standard and the Organisation and service information Standard did not consider the impact of this on the way MNOs currently display this information on their bills and websites. It noted there are specific limitations to what can be presented on the bill. VMO2 said it has alternative methods to inform its customers, such as the premium service checker which provides further detail to the information presented on the bill.

Level 1 providers

323. ***Donr Ltd*** said that draft Code paragraph 3.2.2 makes sense, but it had concerns about the practical implementation. It noted that, currently, if a charity fundraiser wants to advertise a text giving code, they will promote it with a message like: "Text CHRIS to 70085 to give £5. Messages cost £5 plus a standard network rate message". It said this has been well established in the eyes of a charity supporter. It was concerned that changing this model to one that includes a description, charges, contact details and service name adds significantly to the call to action. It said when this is used by

fundraisers to solicit donations for running a marathon, for example, it would be impossible to include this volume of information on a running vest. It said that, assuming a charity is happy with meeting the standard of providing clear information, text giving services should continue to use a simplified call to action, as the service is simplistic, and misleading charity fundraising is governed by the Fundraising Regulator's extensive code of practice.

324. In relation to draft Code paragraph 3.2.16, it noted that the consultation document (paragraph 192) stated that exiting a service should be as easy as signing up to a service. It said this suggested a lack of a detailed understanding of the current requirements. It noted that it is a double opt-in process to create a recurring donation or join a society lottery. To opt out, it requires a solitary word sent by SMS, meaning it is therefore significantly easier to opt out of a service than to join it, or twice as hard to join as it is to leave. It believed a more accurate understanding of current market conditions by the PSA Consumer Panel would yield a more informed opinion about the consumer mind set for services not generating consumer harm.

325. For the reasons outlined against draft Code paragraph 3.2.2, it did not feel this proposal meets the proportionality test.

326. ***Fonix*** had no additional comments with regards to our proposal to introduce a new Transparency Standard. It did, however, seek further clarification on the receipting for Premium SMS Mobile Originating (MO) initiated transactions. It noted the PSA has confirmed that the existing Mobile Terminating (MT) response including all the required information is still considered acceptable, however, this is not made clear in the draft Code and needs to be clarified for any avoidance of doubt.

327. ***Infomedia*** remained concerned with the extension of the PSA's remit into the promotional aspects of service provision. It said this is "mission creep" and not aligned with how other payment instruments are regulated.

328. It said its particular concern is the scenario where direct carrier billing (DCB) appears alongside a number of other payment methods. The customer may have arrived at that checkout from a number of sources, including a promotional journey of many steps. Not all of those steps would it be reasonable for a merchant to make specific reference to DCB or PRS-related terms and conditions – for example if a user could choose a card-based continuous payment authority (CPA) or direct debit via a bank, the bank would not support the 'STOP' SMS cancellation method (but would support the direct debit guarantee) and therefore it would be inappropriate to refer to that until the point at which the customer has been presented with DCB as a payment method (again, drawing a comparison with the way the direct debit guarantee operates).

329. It did not believe this was the intention. It recommended that the PSA consider reviewing the drafting, to make it clear the purpose is to ensure that a regulated party can be held responsible (both to the PSA and customers) for the actions of others in the value chain but without creating onerous requirements on the precise mechanism by which that aim is achieved.

330. ***Mobile Commerce & Other Media Ltd*** said the Standard itself is clear and provides a good outcome of what consumers must receive. However, it said the requirements seem to be overly onerous (draft Code paragraph 3.2.12, for example, requires a receipt for every transaction). It said this doubles the amount of messages to the consumer. It did not think this is a balanced approach to an innovative and competitive market. It said the number of messages to the consumer should be kept to a minimum in order to stop any confusion. It also noted this Requirement states that the receipt must include details of the amount charged, following initial sign up to the service but noted some services do not immediately require a charge. It was therefore concerned this Requirement is overly onerous on the merchants and therefore not proportionate regulation, and it would not be considered balanced and effective by consumers who will just get fed up with additional messages with information they already know and have.

331. ***One charity respondent*** agreed, with the addition that this is an example of where PSA support is very important. For example, they noted draft Code paragraph 3.2.14 requires the PSA to ensure that the name of the service, and the merchant providing it are easily and unequivocally accessible early on in the process so that others in the value chain can cross check and ensure this is correct as part of DDRAC or service set-up.

Broadcasters

332. ***One broadcast respondent*** said it only operates one-in-one-out controlled PRS for both voice (09) and

mobile (SMS) routes. As part of the billing response mechanism, it already operates a lighter-touch form of receipt for all SMS entries. It said it has never had any complaints about this mechanism being opaque or unclear. It noted that if it has to incorporate all the details outlined by the PSA, it may need to send multiple messages to viewers, which would incur additional costs. Therefore, while it fully supports the need for transparency, it believed its existing system is clear enough.

333. ***Global*** did not agree with our proposal to introduce a new Transparency Standard. It said the proposals around receipting (draft Code paragraphs 3.2.12 – 3.2.15) are not clear. First, it was unclear about draft Code paragraph 3.13.4 as to whether a confirmation message is sufficient as a receipt or whether either/both is required. Second, it noted that the information which would need to be included in a 'receipt' will not fit into a single 160-character SMS. It said this will result in severe traffic issues with the networks trying to deliver multiple volumes of mobile terminating (MT) messages, and cause consumer confusion/annoyance and a poorer service. It also argued some of the information suggested would not make sense to consumers (e.g. the name of the service as registered with the PSA). It anticipated this additional requirement and therefore the lack of opportunity to offer promotional messaging due to space available, would result in a revenue drop of between 15-28%. It did not believe this needs to be as prescriptive as it is currently in the draft Code. It also argued it seemed unbalanced and unfair to expect this of only certain providers and not others and was unclear why it did not apply to voice services.

Trade associations

334. ***aimm*** noted that it is critical for consumers to fully understand all the necessary information required for them to make an informed decision to purchase or engage with a service. It asked for further details around the "timely" element of this Standard as this is not covered in the subsequent Requirements.

335. It was concerned about the Requirement at draft Code paragraph 3.2.5 and, in particular, the practicalities of ensuring that the promotional party complies with all Standards and Requirements may be overly onerous. It noted this could be put in contract, but ongoing monitoring of all Standards and Requirements would simply not be possible. It also sought clarity around how this will apply to app stores and the hundreds of services covered through those agreements.

336. It also asked for clarity around draft Code paragraph 3.2.6 relating to situations "where a PRS promotes or is promoted by a non-premium rate electronic communications service", and, requested examples of where this would apply.

337. It noted that draft Code paragraph 3.2.15 stated that the requirements set out at draft Code paragraphs 3.2.12 – 3.2.14 do not apply to voice services and that voice members sought assurance that draft Code paragraph 3.2.8 equally does not apply to their services, as these are technically impossible.

338. It also noted that some charity members raised concern about draft Code paragraph 3.2.2 relating to promoting charity shortcodes in certain circumstances such as in a charity event where a runner is wearing a t-shirt that reads "Text Joanna to 12345 to donate £5". It felt that the inclusion of all the other text feels overly onerous and is unlikely to be read. Equally other events where shortcodes are printed on boats, bikes etc would have similar challenges.

339. It noted that some broadcast members who run competitions are concerned about draft Code paragraphs 3.2.12 and 3.2.14 and sought assurance that they are not expected to send a receipt for each competition entry, which would not fit into a standard 160-character SMS response. It also noted that draft Code paragraph 3.2.14 requires the receipt to set out the name of the service as registered with the PSA and sought clarity on how this would apply to app stores since they do not register the names of their services with the PSA. Additionally, it noted that – when using an app store service – users can turn receipts off. If receipts are turned off, it asked for assurance that provider will not be penalised when receipting does not occur. Also, to this point, it suggested that a universal API be made available for download from the PSA, so that names as registered with the PSA are easily accessible.

340. ***aimm*** made the following comments relating to with our assessment of the transparency standard against the general principles:

    - potentially effective - where technically possible, requirements designed to improve overall consumer awareness of phone-paid services and enabling them to make fully informed decisions about purchases before charges are incurred are useful in preventing instances of uninformed consent. Where not technically possible these are confusing and ineffective. Also, holding

merchants accountable for all activities of the parties they contract under every Standard and Requirement may not be feasible.

- potentially unbalanced - while these requirements have been largely adapted from current Code 14 requirements and providers should be familiar with the concepts and expectations regarding transparency, some additions to Code 15 are unbalanced. For example, the Requirement for voice-based service providers to adhere to draft Code paragraph 3.2.8 which is not technically possible for them. Also, as above, holding merchants accountable for all activities of the parties they contract under every Standard and Requirement is not feasible. It also sought clarity that app stores will be obliged to comply but questioned how this would be practical.

- potentially unfair – it noted there are some differences of approach in the proposals for non-voice-based services versus voice-based services regarding receipting. This is due to the PSA considering that it would be both impractical and unduly costly to require voice-based services to do this. As such it said it is unfair to propose that voice-based services are required to comply with draft Code paragraph 3.2.8 which is not possible for them to do. Also, it noted app stores do not register the names of their services with the PSA, so this proposal is not equitable across all parties. Additionally, it asked how compliance will be monitored in relation to the requirement to ensure third parties comply with all Standards and Requirements. It said if this is not supervised equitably then this is unfair.

- potentially disproportionate – it was concerned the Requirement for merchant providers to be responsible for ensuring that any third party contracted to carry out promotional activity on their behalf complies with all Standards and Requirements will disproportionately increase the regulatory burden on providers. It also noted the narrowing of the scope relating to the proposed new receipting Requirements and not to apply these to voice-based services (whether landline or mobile) but asked that Code paragraph 3.2.8 be included in this, as these proposals are not possible for voice-based services.

- potentially transparent – it said this could be transparent if the confusion over app store registration and voice-based requirements are clarified.

341. ***Mobile UK*** noted the PSA recognises ICSS as a service causing harm and which is presently the most complained about service type. Despite the introduction of Code 14 special conditions in December 2019 and a partial Google advertising ban in March 2020, ICSS levels of harm remain unacceptably high. It questioned the legitimacy of ICSS where freephone numbers are widely available and given customers rarely benefit from any additional services. It said it was concerned transparency rules will not address the harm from ICSS given the low levels of awareness for ICSS and the tendency for consumers to bypass key information and pricing irrespective of signposting. It urged the PSA to evaluate the full range of options to address the harm caused by ICSS, including restrictions on some or all types of onward connect, the introduction of a price cap or a comprehensive search engine advertising ban, some of which may require support from Ofcom or DCMS to enact.

Charities

342. ***Macmillan Cancer Support*** agreed with our proposal to introduce a new Transparency Standard. It said that, as with other values, transparency should play a key role in the relationship between the provider and the consumer.

343. ***RSPCA*** agreed with our proposal to introduce a new Transparency Standard. It also agreed with our assessment of the Transparency Standard against the general principles.

344. ***One charity respondent*** agreed in principle.

Consumers and consumer advocates

345. ***CCP and ACOD*** said they noted that the PSA is proposing to introduce a Transparency Standard that will seek to ensure that consumers receive full and clear information to enable them to make fully informed decisions when purchasing phone-paid services. They said that while they support enhanced standards to secure transparency, they did not think that transparency measures will on their own stop non-complaint ICSS and directory enquiry providers who breach transparency rules and take advantage of consumers and citizens who rely on their services, particularly in stressful situations.

346. They said they remained concerned that ICSS cause considerable detriment to many consumers,

particularly those in financially vulnerable circumstances. They noted that while the PSA's complaints levels have dropped overall, complaints regarding ICSS remain consistent. They considered these services offer little or no benefit to consumers – purely harm, inconvenience and cost. They said they would welcome a universal ban to ensure that consumers – particularly people in vulnerable circumstances - are protected. They welcomed the PSA's ongoing work to mitigate consumer detriment caused by these services and collaboration with others to highlight this detriment. They also noted that the PSA does not currently have the powers to ban these services - and they previously suggested that this issue could be addressed as part of Ofcom's forthcoming online safety work. They said they would welcome collaboration with the PSA's Consumer Panel and will continue discussions with Ofcom, DCMS and others, to understand what more can be done to address the issue.

347. They also noted that they have previously raised concerns with Ofcom and the PSA that consumers in vulnerable circumstances continue to experience bill-shock after calling directory enquiry services and being connected to freephone numbers such as Citizens Advice and the Samaritans. They noted that, despite regulatory changes in this area by both Ofcom and the PSA, providers who currently flout regulatory conditions, will continue to do so.

348. In terms of making communications services inclusive, they noted that they outlined in their recently published strategic plan that consumers across the UK need access to basic, secure, affordable, reliable, resilient communications services that are both accessible and usable across a variety of devices. To achieve this, it was essential to ensure that consumers with specific access requirements are able to navigate the digital world without facing barriers to engagement. All information designed for use by consumers – including the PSA website guides - must be accessible and usable by all. Also, they recommended the use of alternative formats that allow everyone to understand the information at the same time – subtitles on video content, Easy Read documents, colour and contrast options that cover a range of needs and documents that make sense when read aloud by screen reading software. They urged the PSA to link any Code accessibility requirements to existing statutory requirements designed to protect consumers against discrimination.

349. Finally, in terms of scams and fraudulent activity, they emphasised that consumers need the skills and confidence to navigate the communications market, participate digitally and stay safe online. Consumer education is a key component to achieving this.

350. ***PSCG*** agreed with our proposal to introduce a new Transparency Standard. However, it noted that while there is a requirement to provide full information, there needs to be clarity about what information is important, and a requirement to bring such important information to the consumers attention. It needs to be made clear that such subterfuge is not an "acceptable business practice". It said it would like to see checkout information displayed in a standard manner – as for example when using PayPal or Amazon Pay.

351. It wondered whether there is a case for specific requirements where charges are initiated through a web interface rather than via a premium rate call or a mobile originated (MO) text. These services have historically generated more complaints.

352. It did not agree with our assessment of the Transparency Standard against the general principles and said that more needs to be done to protect vulnerable consumers from the "sharp practices" of some in the industry.

353. ***Which?*** supported the introduction of the proposed Transparency Standard. It said it is important that consumers are able to make informed decisions when purchasing phone-paid services and that the point of purchase is distinct from any promotional material or activity. It agreed that costs should be clear and consumers made aware of them before they commit to a purchase, and that receipts should be sent to the consumer after initial purchase and any subsequent purchases. It said it is particularly supportive of the proposal to ensure the method of exiting the service is the same or as simple as the sign-up process.

354. It acknowledged that the PSA has decided not to require a free pre-call announcement for ICSS due to current technical limitations of providers. It recommended that the PSA reconsiders this proposal in future if and when the technical limitations have changed.

PSA's assessment of inputs received

355. Respondents were broadly supportive on our proposal to introduce a new Transparency Standard. However, we received a number of detailed points, as follows.

Promotion

356. In terms of feedback received on potential impacts of draft Code paragraph 3.2.2 and charity promotions on running vests or similar, we do not agree that the Requirement will effectively end this form of promotion. Indeed, we note that the information listed is not new and already exists under Code 14. Also, it is important to note that some elements are only applicable to certain types of services such as subscription-based services (recurring charges) and competitions and so would not need to be stated on any promotional material for a single transaction donation. Also, in terms of the 'running vest' scenario, we consider it should already be clear to a consumer who the charity beneficiary is, the cost of the donation and that the nature of the service is a one-off text donation. In terms of the service name as registered with the PSA and customer service contact details, we consider it should be clear which charity the donation is for so if a consumer does have an issue, they should be able to easily locate contact details online. Therefore, our assessment is that this is likely to be a service which would benefit from bespoke permission for alternative means to be used instead of strict adherence to draft Code paragraph 3.2.2 (e) and (f). This is a good example of how the flexibility we have sought to build into Code 15 can be applied.

357. For the reasons set out above, we disagree with the assertion that draft Code paragraph 3.2.2 does not meet proportionality tests in relation to charitable donations as we continue to believe the information required is essential for consumers to be able to make informed decisions, including for charity donation services. We also recognise that charitable donation services are also regulated by the Fundraising Regulator and misleading fundraising is covered under their code. However, it is important to be clear that, in our view, there are key differences in terms of how consumers engage with, and are protected in relation to charities more generally, and charities which offer phone-paid services.

358. We have also considered concerns about PSA regulation of promotional aspects of phone-paid services amounting to "mission creep". We do not agree. We have always regulated the promotion, content and operation of phone-paid services. This is vital for consumer protection in this sector and will continue to be a key objective under Code 15.

359. We do not agree that draft Code paragraph 3.2.5 is overly onerous and not feasible. It is essential that merchant providers take full responsibility for how their services are promoted to consumers. This means that when providers contract with third-party marketing partners, who may sit outside the regulated value-chain, they are accountable under the draft Code for any wrongdoing committed by the third party. Absent this, there will be significant loopholes in terms of the scope of regulation and our ability to tackle consumer harm. It is important to note, however, that only certain elements of the Standards and Requirements would be applicable dependent on the contractual relationship between the provider and the third party. To this end, we have amended draft Code paragraph 3.2.5 to be absolutely clear that merchants are responsible for ensuring that any third parties with whom they contract with to provide promotional activity on their behalf comply with Standards and Requirements that apply to such activity and not other Requirements, for example those relating to customer care, registration and systems.

360. Several respondents questioned the inclusion and relevance of draft Code paragraph 3.2.6 which states that where a PRS promotes or is promoted by a non-premium rate electronic communications service, both services will be considered as one where, in the opinion of the PSA, it is reasonable to do so. Again, this is not a new requirement. It already exists in Code 14 (rule 2.2.5) and has also existed in previous editions (13th and 12th). To be clear, the Requirement is designed to capture scenarios where, for example, during a consumer call to a geographic number a PRS number is promoted to the consumer, or where a PRS is promoted via a non-PRS SMS. In these and other similar scenarios, it remains important to be clear that the non-PRS activity will be treated as part of the PRS. The provision has been used previously during enforcement work involving services with elements of non-PRS and PRS.

Point of purchase

361. We have also considered responses relating to draft Code paragraph 3.2.8 about it being technically impossible to implement this Requirement for voice services. The main concern relates to draft Code paragraph 3.2.8(a) which states that the point of purchase must be clearly signposted by distinguishing it from other aspects of the service (such as by design and colour scheme). We do not agree with these concerns. Naturally, by design, the point of purchase for a voice-based service would be separate and distinguishable from other aspects of the service as the consumer is required to make a call thus being taken away from the service promotion and into the phone call application on a mobile handset or by dialling a number on a landline handset.

362. It remains our view that draft Code paragraph 3.2.8 is applicable to all services and the information set out in this paragraph should be made clear within the promotion for a service regardless of whether it is a voice service or non-voice service. It is an essential consumer protection requirement that consumers of voice-based services (particularly ICSS) understand that by calling the service there is an obligation to pay and that they will incur charges on their phone bill. In terms of frequency of cost, we consider this would be covered by stating the per minute or per call charge. It is also important to note that the obligation to pay element of draft Code paragraph 3.2.8 is also a statutory requirement[3] for all distance contracts concluded by electronic means and should therefore be something all providers are doing as a matter of course. The importance of the point of purchase being clear was emphasised by attendees at our consumer webinar.

Receipting – mobile network consumers

363. We have also considered comments about receipting for mobile network customers and, in particular, concerns that these Requirements may be overly onerous. We don't agree with this view. It is common practice in all retail markets for receipts to be provided to consumers after any transactions. Therefore, consumers are already familiar with receipts – and receiving a receipt after a purchase will be consistent with their expectations which have been formed from making purchases in other sectors.

364. We also note that there was some concern about potential duplication and that sending receipts will double the number of messages sent to consumers given broadcasters already send a confirmation message which provides confirmation of entry to consumers. We don't agree that this provision should lead to any duplication in the way suggested. It is our view that it should be possible to provide the receipt and confirmation of entry as the same message, suitably worded, so long as it meets both sets of requirements. This may be an area we would look to provide further clarity on through our guidance.

365. Some stakeholders also expressed concerns about draft Code paragraph 3.2.14 relating to information to be included in the receipt and the limited character spaces that are available within an SMS for receipts. This is something we have considered previously and our view is that it is possible to contain all the information required by draft Code paragraph 3.2.14 within one SMS for both subscription services and single transaction services. Again, receipts are already a requirement under Code 14 for all subscription services and, therefore, this is not a new requirement, and we don't agree that it will be difficult for providers to implement.

Method of exit

366. We have also carefully considered stakeholder comments on our proposals relating to method of exit (draft Code paragraph 3.2.16). We want to be clear that the intention behind this Requirement is not to make exiting a service harder than it currently is. Our intention is that exiting a service should be simple and certainly no more difficult than signing up to a service and that the method of exit should always be relevant and appropriate to the method of sign-up.

367. In order to provide additional clarity on this point, and in light of stakeholder comments received, we are amending the wording of draft Code paragraph 3.2.16 to be clear that there must be simple methods of permanent exit from the PRS. Specifically, it must include the same method used by a consumer to sign up to or access the service, except where it is not technically possible or the consumer sign up to or access to the service required the use of multi-factor authentication (MFA). We consider this will provide greater certainty in terms of the purpose behind this provision.

368. We have also noted Infomedia's comments relating to possible requirements on merchants to make specific reference to DCB or PRS-related terms and conditions when multiple payment methods are available. We largely agree with this insofar as where a service offers multiple payment options for consumers, it may only be appropriate to provide opt-out information that applied to DCB where a consumer has selected to pay for the service via DCB on their phone bill. The exception to this would be where the opt-out method is the same across all payment methods. This would be an area we look to provide additional clarity on through our guidance.

ICSS

369. We received a number of comments relating to ICSS and concerns that the proposed new

3 Regulation 14, paragraphs (2) - (4) of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Transparency Standard will not be effective in tackling consumer harm associated with ICSS. We have carefully considered these comments. We recognise the concern that consumers are likely to be unaware when they are using an ICSS and have a general lack of understanding of what an ICSS is. However, we consider that the Transparency Standard and Requirements, particularly draft Code paragraphs 3.2.1, 3.2.2, 3.2.3 and 3.2.4, have a number of key consumer safeguards which should be effective in preventing harm. This includes the need for full transparency of the nature of the service, including the cost of the service, the name of the service and the provider details including customer care contact details. We also note that draft Code paragraph 3.2.10 specifies that where a service connects a consumer to another organisation, the cost of continuing the call including information about access charges must be clearly stated before onward connection.

370. Respondents also said that draft Code paragraph 3.2.8 will not be effective in protecting consumers from harm associated with ICSS. Again, while we are sympathetic to these concerns, we consider that this particular provision includes clear Requirements on pricing information, the obligation to pay and that charges will be added to the consumers' bill.

371. We also note the view that draft Code paragraph 3.2.8 should require free pre-call announcements for ICSS. This is something we have considered in the past and our concern has always been that such a requirement may not meet the proportionality tests. This is because, as we understand it, current network capabilities do not as a whole allow free pre-call announcements. This is particularly the case where per call tariffs are utilised, as the service charge is applied immediately upon connection to the service. Therefore, we are not proposing any form of free pre-call announcement at this time.

372. We also received a number of responses in relation to how refunds should apply in the context of ICSS. One suggestion was that where refunds are due in relation to ICSS, access charges should be refunded by network operators. While we are sympathetic, this is not something the PSA has the power to require – this is a matter for Ofcom.

373. We note a number of respondents continue to question the legitimacy of ICSS on the basis that they provide no value to consumers. Again, while we are sympathetic to this view, it is important to note that the PSA does not have the power to ban service types – we can only regulate services that fall within our defined remit. We have sought to address problems associated with ICSS by ensuring these services are effectively regulated to the extent our powers enable us to do this. The 2019/20 AMR suggested that the regulations that the PSA introduced in December 2019 have led to a reduction in consumer harm arising from ICSS but have not eliminated harm. We will continue to monitor the effectiveness of our action, and to engage with Government. However, in the event that our regulation proves ineffective in terms of fully tackling consumer harm, it will then be a matter for Government to address.

Use of the term "timely"

374. We note one respondent questioned the use of the term "timely" within the Transparency Standard. We continue to believe this is helpful in terms of what we consider to be points requiring timely action, including draft Code paragraph 3.2.2 ("before making their purchase"), draft Code paragraph 3.2.8 ("at the point of purchase") and the specific requirement for "promptly" at draft Code paragraph 3.2.12.

Testing the effectiveness of the Standard

375. One respondent suggested that we should test the effectiveness of the Transparency Standard with consumers in a controlled environment. We are not clear as to the value of this. We have sought to include more stringent requirements in terms of enhanced transparency through Code 15. We will continue to monitor the effectiveness of these new Requirements.

Final decision

376. Having considered stakeholders' comments, we have decided to implement the proposals set out in relation to our proposed Transparency Standard and Requirements (draft Code paragraph 3.2), as set out in our consultation document, with two revisions. First, in light of feedback received, we have amended draft Code paragraph 3.2.5 to make clear that merchant providers are only required to ensure that any third parties contracted to carry out promotional activity on their behalf comply with Standards and Requirements set out in Section 3 that apply to promotional marketing activities only. Second, and again in light of feedback received, we have amended draft Code paragraph 3.2.16 to provide clarity that we expect this to include the same method used by a consumer to sign up to or access the service, except in defined circumstances; that is either where it is not technically possible

to use that same method as a method of exit or where the consumer signed up or accessed the services using MFA.

Assessment framework

377. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Transparency Standard and Requirements against the general principles which we set out in the discussion document. A number of these we have addressed in our assessment of responses to questions 15 and 16 which we have addressed above. In particular, and as mentioned above, we have amended draft Code paragraph 3.2.5 to address concerns that the previous draft Code provision is overly onerous and not feasible. We have also amended draft Code paragraph 3.2.16 to provide clarity that we expect the method of exit to include the same method used by a consumer to sign up to or access the service, except in defined circumstances. We have sought to provide clarity that merchants are responsible for ensuring that any third parties with whom they contract with to provide promotional activity on their behalf only need to comply with Standards and Requirements that apply to such activity and not other Requirements, including those relating to customer care, registration and systems.

378. Having done so, we consider that our new Transparency Standard and Requirements meets these tests, as we set out below:

- **effective** as they have been designed to improve overall consumer awareness of phone-paid services by enabling them to make fully informed decisions about purchases before charges are incurred and preventing instances of uninformed consent. We believe the Requirements will do this by:
    - creating a purchasing experience that is consistent with other forms of digital purchases that consumers are more familiar with and trust – for example PayPal, debit/credit card – where it is clear to a consumer when they have entered a purchasing environment and where a receipt is received following payment.
    - setting clear expectations regarding the responsibility of merchants to ensure promotional material is compliant and that third-party marketing partners are satisfying the Standards and Requirements. Holding merchants accountable for the promotional activities of the parties they contract with should act as a deterrent and incentivise compliance by enabling more effective enforcement where things go wrong.
- **balanced** as they have been largely adapted from current Code 14 rules, special conditions and existing guidance. Accordingly, providers should be familiar with the concepts and expectations regarding transparency. Therefore, the regulatory burden is not increased unnecessarily as many compliant providers will already be following the Requirements. In particular:
    - we consider that by consolidating all current rules, special conditions and guidance relating to transparency into a single Standard will provide a simplified approach to regulation, making compliance easier. Providers should be able to understand more easily what they are expected to do. While we continue to include service-specific requirements for those services which it would be disproportionate to apply more widely, these are significantly reduced from Code 14.
    - we consider that clearer Requirements about the point of purchase needing to be clear and distinct, regardless of what service is on offer, should enable competition and consumer choice. This is because we consider it removes any perceived advantage of offering one particular service type over another. For example, under the current framework we have seen many providers stop offering subscription services to avoid having to comply with special conditions. This approach still enables innovation as providers retain full editorial control over their promotional material and service content and we do not consider the proposals to be overly prescriptive.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled PRS, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

We note there are some differences of approach in the proposals for non-voice-based services versus voice-based services regarding receipting. However, this is because we consider that it would be both impractical and unduly costly to require voice-based services to do this.

- **proportionate** as we consider that they would not disproportionately increase the regulatory burden on providers. Any potential regulatory burden is reduced as many of the transparency proposals have been adapted from existing rules and guidance. We expect that providers will already be meeting the proposed Requirements. Of particular note:
    - The Requirements relating to clear and prominent information including pricing and clear and distinctive purchase environments have been brought across from subscription special conditions. Since the introduction of these special conditions, we have seen a significant reduction in complaints about subscription services. In 2019/20 we received 9,492 complaints about subscription services and in 2020/21 this reduced to just over 5,000. Despite this reduction, complaints about subscription services are still consistently higher than for single payment services. Complaints for ICSS are also disproportionately high. ICSS represented around 2.5% of the market, they accounted for approximately 13% of the complaints we received in 2020/21. This is up from about 5% of total complaints in 2019/20. The most common reason for complaints is that the charges are unexpected or unsolicited. We believe that the new transparency Requirements will address the continuing consumer harm associated with all service types.
    - We are also narrowing the scope relating to the new receipting Requirements and, in particular, are not applying these to voice-based services (whether landline or mobile). This is because we are concerned that to extend this Requirement to voice-based services may be disproportionate as such providers would need to make arrangements for bulk messaging facilities and/or obtaining and recording email addresses, which they may not already have in place and may require significant additional costs to do.
- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above, and the effects of the changes are clear on the face of the new Standard. We, therefore, consider that the Code and this accompanying statement clearly set out to industry the Requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Fairness Standard

Standard

Consumers must be treated fairly throughout their experience of PRS including being charged for PRS only where they have provided informed and robust consent.

Rationale

This Standard aims to ensure that consumers are not misled into using phone-paid services. It recognises the importance of ensuring that consumers are treated fairly and equitably throughout their experience of phone-paid services (including during service promotion, point of purchase and when providing consent to charges) and have confidence that this is the case.

Background

379. Code 14 has the following fairness Outcome:

"That consumers of PRS are treated fairly and equitably."

380. A number of rules support this fairness Outcome. The rules focus on fair and equitable treatment requiring that services do not mislead or are likely to mislead in any way, and that consumers must not be charged without prior consent[4]. In recent years, the PSA has introduced new regulations

4 These rules also address undue delay, method of exit, and aspects of vulnerability including age restrictions and protecting children. We are proposing that under Code 15 these are taken forward under the Customer care, Transparency and Vulnerable Consumers Standards respectively.

and guidance relating to the fair treatment of consumers – from misleading promotions through to authentication and consent.

381. There are also various special conditions which set out specific requirements relating to fairness dependent on service type. For example, subscription services, online adult services, online competition services, and ICSS.

Consultation proposals

382. We proposed to introduce a new overarching Fairness Standard which builds on the Code 14 fairness Outcome, rules and various special conditions (including those relating to subscriptions, online adult services, online competition services, recurring donations, society lotteries and ICSS).

383. The new Requirements we proposed included:

- providers must not use any misleading marketing technique, language or imagery that may mis-represent themselves
- MFA must be used by providers to establish and demonstrate informed and explicit consumer consent to charges where: the service is accessed fully or in part via an online gateway; the service is a subscription service, including services involving a recurring donation; and the service is a society lottery service. To be clear, we are not proposing at this stage to apply MFA Requirements for voice-based services or single transaction services that are accessed via PSMS.
- consumer consent is required to be established every 12 months for all subscription services, including recurring donation services. In making this proposal we are fully aware that many subscription services are valued by consumers and do not cause harm, but we believe that the principle of equal protection for all consumers is of primary importance. We have considered alternative options, including notification, automatic opt-outs, introducing a 120-day rule. However, on balance, our provisional assessment, in line with our overarching aim to simplify regulation, is that a Requirement for consumers to automatically opt into services every 12 months is the simplest and clearest way forward. We have also taken account of the cross-market principles of good business practice which the government expects regulators to follow. These include, among others, that:
- "Auto-renewal should generally be on an 'opt-in' basis upfront, and include a clear and prominent option without auto-renewal in most markets"
- where verification of consumer consent to charges is undertaken by third parties, the third party must be independent of the merchant provider
- to demonstrate consumer consent to charges for a phone-paid service provided fully or partly through an online gateway, the need to retain records in compliance with any relevant time periods specified in the data retention notice.

384. We asked the following questions:

Q17: Do you agree with our proposal to introduce a new Fairness Standard? Please provide an explanation as to why you agree or disagree.

Q18: Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

385. *BT* agreed that fair treatment of consumers should be at the heart of all PRS providers' business models and consumers should only be charged for services where their informed and explicit consent has been provided.

386. It welcomed MFA for all online services. However, it did not agree that there is a need for the introduction of a re-opt in for phone-paid subscription services after 12 months. It stated that new

Code already provides consumers with an immediate right of exit from a service under draft Code paragraph 3.2.17.

387. In terms of draft Code paragraph 3.3.5, it commented that the PSA should provide further guidance on what usage levels would be deemed as "excessive". It noted that while the PSD2 regime falls under the remit of the FCA, further guidance should also reference the impact of PSD2 on PRS and how the associated payment transaction caps under the electronic communications exclusion should be interpreted alongside levels of PRS usage deemed to be "excessive".

388. It said it broadly agreed with PSA's assessment against the general principles, however there a number of issues in respect of the proposed 12-month opt-in rule. In its view, draft Code paragraph 3.3.5 is unnecessary and disproportionate. It was concerned that if brought into force, this rule potentially has a number of unintended consequences, including providers exiting the market and putting charge to bill at a competitive disadvantage to other payment methods, which could ultimately impact consumer choice and enjoyment of subscription services.

389. ***Telecom2*** said it is broadly in agreement with the Fairness Standard but feels that more clarity on some points is needed. It said one that stands out is "excessive use" and questioned how this would be measured. It noted different services have different levels of use, and some are seasonal. It thought objective measurement of excessive use is problematical and subjective measurement based on one individual's view would be unfair. It said it does not have any subscription services on its network but doesn't understand why they are being treated differently to other recurring charge/rolling contracts.

390. In relation to question 17, it said much of this concerns areas that are not appropriate to voice services. It said it does have an issue with the comment in consultation document paragraph 215, "Our experience since the introduction of the new ICSS special condition is that complaint levels have remained disproportionally high despite reductions in other areas." It said this is due to the activities of one provider who actively encourages any of their consumers who have called an ICSS to complain to the PSA. It said it is not reasonable or fair to include these complaints in any decision making.

391. ***VMO2*** agreed with the introduction of a Fairness Standard, but strongly disagreed with part of the assessment, specifically on consumer having to re-opt-in on annual basis. It strongly believed introducing a 12-month re-opt-in proposals would be detrimental to the PRS market and pointed to the recent changes introduced which has reduced the customer harm this section intends to address. It believed introducing this requirement would disadvantage customers who would no longer be presented with charge to mobile as an alternative payment mechanism on these subscription services. Therefore, it argued introducing this would be neither fair nor proportionate.

392. ***Virtual Talk Limited*** commented on draft Code paragraph 3.3.7 relating to MFA. It said it is concerned that this section is drafted too widely and may be seen to capture those services where the entire cost of the service is paid for by an Interactive Voice Response (IVR) call, but some service content is delivered online. It noted the comments that IVR services are not intended to be caught by this definition and would like some additional clarity on this point.

393. ***Vodafone*** considered the proposed introduction of new controls on long term subscriptions to be disproportionate and to potentially undermine attempts to secure long-term growth in this market. It said it is reasonable to alert customers to an ongoing subscription once a year via a mechanism separate to the monthly spend reminder but it is disproportionate to make them create a new consent to buy when other equivalent payment mechanics do not require this.

Level 1 providers

394. ***Donr Ltd*** said it has several issues with this Standard and, therefore, disagrees with our proposal to introduce a new Fairness Standard as it currently stands. It noted the following:

- draft code paragraph 3.3.8 - refers to "verified email address" which remains undefined in the Code. It said this should state an "email address" as references to mobile phone numbers and names do, or that the expectations of verifying an email address be better defined. Its expectation is that a verified email address is one that has been checked at the point of entry to confirm it contains valid syntax such as an "@ sign, domain and top-level domain (TLD) (e.g. .com)".
- SKIP command – it noted that this Standard has incorporated much of the subscriptions special conditions but appears to drop the SKIP command options for charities. While it supported its removal, it believed this should be explicitly confirmed to manage charity expectations.

- draft code paragraph 3.3.11 - it recognises this proposal has proved to be contentious and that the PSA Consumer Panel suggested a six month re-opt window for subscriptions. It did not agree with this proposal. It said it had commissioned some market research via Mobilesquared, from a panel of 1,000 consumers who hold monthly subscriptions. Donr said that this research found that:
    - subscriptions have become normalised and people consider it a fact of life now, for example 75% of those surveyed subscribed to Netflix
    - subscriptions are viewed as long term, with for example over 75% of those making charity donations doing so for over a year
    - only a small number of consumers (1.5%) are subscribed to a service they do not want
    - only a small number of people (7%) did not consider the subscription authorisation process to be clear and transparent
    - any move from a continuous payment authority to a fixed-term subscription is unpopular
    - a majority of people (75%) did not agree with the idea of a third party automatically cancelling a subscription on their behalf
    - in terms of the role of receipts and reminder messages, most consumers (57%) preferred to receive quarterly and annual reminders than monthly reminders
    - in terms of informed choice, and the impact of an annual message about a subscription, the majority of consumers (97%) asked thought this would be beneficial in some way.
- alternative proposals - it suggested the frequency of reminders are lowered and the importance is increased. For a monthly service like a charity donation or Spotify subscription, it suggested a reminder message is sent each month for the first three months (quarter), then once a quarter after that with an annual service summary message sent every 12 months. These messages should be sufficiently worded to relay their importance, while sent at a lesser frequency to ensure they are not ignored.
- legacy services – it noted from the PSA forums and webinars that the PSA has considered there is a problem with subscriptions that originated before the subscriptions special conditions came into force. It suggested this needs to be considered separately to the fairness standard as they may not meet the MFA standards now in place.

395. In terms of Q18, it did not consider the proposal for draft Code paragraph 3.3.11 to be effective. Furthermore, it did not believe the proposal to automatically opt people out of a service to be balanced due to the very low levels of support in the survey. Because of this, it did not support the view it is proportionate as an overwhelming majority of consumers enjoying passive happiness with a service will be affected by the actions of a few bad actors. It believed that the PSA should be able to prevent bad actors creating unwarranted subscriptions through the use of their supervisory powers, rather than penalising all subscription participants.

396. ***Fonix*** did not agree with the proposal for a re-opt-in every 12 months for subscription services. It argued this would be extremely detrimental to the market for existing services and future growth and is not required. It noted that all subscription services are currently operated behind a two-factor authentication, with the majority being account based and behind username and password which means there is already a robust consent to charge for these services. It also argued that due to the current billing requirements of phone-paid subscriptions services each billing period, including receipting and STOP messages, where users are informed how to opt out with a very simply STOP SMS request, this proposal was not necessary. It was concerned that asking consumers to positively opt back into a service rather than opt out is confusing to the consumer. It, therefore, argued that an approach based on opt-out was preferable and that further regulation around these services will simply result in merchants removing mobile payments as an option.

397. It also noted with regards to charity regular giving, supporters receive an SMS the day before their donation is due giving them the option to SKIP their donation or get in touch to stop it. It noted that supporters expect to give a charitable donation on an ongoing basis, rather than just for a 12-month period and that there was no loyalty trap since the amount of their donation is fixed and never increases without their consent. It said there is no consumer harm from regular charity donations, so

there is no problem which needs to be fixed. It said that Fonix have recorded no consumer complaints on regular giving donation services in the last six months. Accordingly, it said it believes that the inclusion of this rule within Code 15 will deter new entrants to the market and significantly impact buoyant sectors such as charity and streaming services.

398. It did not agree with our assessment against the general principles. This was on the basis that it did not agree that the proposal for an annual re-opt-in was required. It argued there have been fundamental changes to how subscription services operate, including PIN verification, receipt messages after every charge, reminder messages and robust consent to charge via Level 1 provider hosted screens. It also argued there has been a significant decline in "rogue" subscription services being allowed within the market. It was concerned that to introduce an annual opt-in requirement would further disadvantage mobile payments in comparison to other payment mechanics and would mean a number of the high value branded digital subscription services would remove phone-paid services and ensure new entrants to the market will not offer mobile payments as an option.

399. ***Infomedia*** said it has considerable concern with the significant change to the regulation of subscription services that would require consent to be re-captured on an annual basis. It referred to the CMA findings in relation to its investigation into auto-renewal of anti-virus services and argued this was about consumers opting into auto renewal at the point of purchase, not a system of repeating purchase on an annual basis. It was concerned the magnitude of the change is significant and will impact the marketplace. It also observed the majority of the harm occurs within the first three to six months of a non-compliant or fraudulent service entering the market and would welcome an analysis of PSA complaints regarding subscription services and the age of the complainants' subscriptions to identify the proportion of complaints that could be resolved (or would not have arisen) with the proposed annual renewals change in place. It also argued that alternative measures have been dismissed somewhat out of hand in the consultation document (paragraph 233). It argued that if the PSA goes ahead with these proposals, then a more proportionate approach would be to phase in this change, with objective testing and monitoring of the impact before a further consultation on the outcome leading to an informed decision on whether to make the change permanent.

400. ***Mobile Commerce & Other Media Ltd*** did not agree. It said the Code seems to be confused over its requirements of PRS providers in relation to fairness. While it is agreed that everyone should be treated fairly, and equitably, it said there are circumstances, which are set out under draft Code paragraph 3.3.5 which would require consumers to be treated differently. It noted the draft Code already requires a receipt to be given after every spend, so the consumer is receiving a reminder every time they spend. It therefore did not agree the need for consumer to re-sign-up after 12 months. It argued this requirement is not effective, balanced or proportionate.

401. ***One industry respondent*** said it is plainly correct that fairness should be a Standard. They did, however, raise concerns with implementation. First, while they agreed that excessive use should be guarded against, how and when that is expected to be judged or what it is monitored against is unclear. Second, they were concerned that the re-opt-in proposal has been brought in at a blanket level regardless of service type. They were concerned that limited consideration has been given to charitable donations, for example, where other forms of payment do not require this and so risks charities not using phone-paid services as a repeat donation option.

402. They also did not agree with our assessment against the general principles. They said there is no transparency over what practical issues draft Code paragraph 3.3.11 is achieving across the entire industry (rather than possible specific sectors or service types) and no transparency over what research or checks have been done to ensure it achieves this.

403. ***Another industry respondent*** strongly objected to our proposal for annual re-opt-ins stating that there is no problem to solve and complaints are low. It said that unlike annual contracts, regular giving can be stopped at any time and that regular text giving is already more controllable than other means of giving. They also pointed to the cost of contacting consumers and the challenge charities will have in communicating the message of asking donors to opt in. It argued that charities are more likely to receive complaints as a result of this change and that it will be confusing for consumers. It also said that it would put this payment mechanic at a disadvantage compared to direct debit which has no annual renewal. It said that the PSA's logic was faulty as the PSA stated they saw no evidence that an introduction of a 12-month re-opt-in would lead to increased costs, because any associated costs would be offset by the reduced costs associated with less consumer complaints. But since charities have had no complaints, no costs can be offset. The real concern for charities is the loss of revenue, the introduction of an opt-in renewal will increase attrition rates and reduce income and will leave charities investing money in other sources of donation which have a better return.

Broadcasters

404. ***One broadcast respondent*** welcomed the proposal not to apply MFA Requirements for voice-based services or single transaction services that are accessed via PSMS. It said it is not unreasonable to suggest that MFA would be incredibly problematic for the broadcast sector and would severely inhibit its ability to operate effectively as a commercial entity in this space.

405. ***Global*** did not agree with our proposal to introduce a new Fairness Standard. It noted that in relation to MFA (draft Code paragraph 3.3.8(b(ii))), the draft Code said that a PIN loop system must not auto-populate, but that this functionality is now standard for Apple software.

406. It also opposed our annual re-opt-in proposal on the basis it did not believe that this was proportionate, fair or necessary and that the PSA's response to this so far has been narrow-minded, short-sighted and unevidenced. It noted that no other digital subscription service currently operates like this and unless this is mandated in law by UK Government, there is no reason why we should attempt to pre-empt something that may not happen. It expressed concern that a change like this could have disastrous implications, especially on the UK charity sector, for whom regular giving is a crucial source of income and it generates few complaints.

Trade associations

407. ***aimm*** was generally in agreement with the introduction of a Fairness Standard but had grave concerns about some elements of the proposed Standard and asked for additional clarity over certain provisions.

408. It requested more clarity on what constitutes "excessive use" and questioned whether this would be set out in guidance or best practice and if so, will it be standardised or equitable depending on customer engagement and profile/type of service? It said that its members would look for reassurance that they would not be penalised for making their own decision on excessive use.

409. It was also disappointed to see that valuable points relating to future proofing this Standard - in relation to MFA - have not been realised and that examples given of acceptable MFA do not allow for any use of technology as it progresses that will deliver the same level of authentication using a different method. It asked that this be accounted for in order that further consultation is not required in what could be a relatively short space of time, as technology evolves.

410. Equally, it said members questioned the proposal for MFA at draft Code paragraph 3.3.8 (b) about the use of a secure PIN loop system. It said that where mobile phones automatically populate PIN codes, as part of their operating systems, its members wanted confirmation that they will not be responsible for this auto-population.

411. It also noted its members were absolutely united in their robust disagreement of draft Code paragraph 3.3.11 that requires the re-authentication of subscription users every 12 months. It was agreed that much good work has gone into improving the consumer journey around subscriptions services already, and so no further action is required.

412. ***aimm*** referred to the research it had commissioned with Donr and Fonix, with additional financial support given by others in the value chain, including aimm. It highlighted many of the same points that Donr made from the findings (see paragraph 394) but it also said that the research demonstrated:

- there is a clear demand around the opportunity to pay for content in this way and that newer subscription services have become successful quickly due to their convenience and ease of use
- a large majority of subscription users are comfortable - and in fact have an expectation – that their subscription will be ongoing, with no end date, until they choose to cease it
- subscribers acknowledged that they were enrolled in a subscription service until they chose to notify the service provider that they did not want to continue.
- subscribers feel that they are currently receiving too many notifications about how to exit from their chosen subscription/s.
- subscribers were not satisfied with the current monthly reminder process.

413. ***aimm*** therefore argued these results reinforce the view that there is no problem to solve with subscription services and that further regulation is unnecessary.

414. Alongside its research, aimm also provide a number of insights and feedback on this proposal following consultation with its members. It said that members asked for the evidence that harm exists here given recent PSA complaints data suggested complaints levels were low. It also noted that charity supporters who give a regular donation (also included under this proposal), receive regular reminders that they can skip a donation or stop their donations at any time. It said the same is true for commercial models - consumers are very familiar with the format of opting out of those subscriptions and are regularly reminded about the service they are using and how to leave it.

415. It also asserted that these services do not have a renewal date, as they are not annual contracts with no break opportunity and because neither the service offering or price changes, to necessitate such a renewal trigger. This regulation makes sense when aimed at such services that require renewal such as insurance, or where a subscription is taken out by the purchaser for a contractually agreed amount of time (one year) but not in this instance where contracts are rolling and can be cancelled at any time. It was worried that phone-paid services will be disadvantaged by this proposal, which will see users confused by unnecessary communications sent to them and will move to easier methods such as direct debit.

416. It noted one intermediary provider can clearly demonstrate - with a drop-off of over 90% of users - that on subscription services where usage can be proven, asking consumers to opt back in, rather than opting out causes confusion, and a lack of response.

417. It added one large platform provider noted this proposal would be a challenge for its platform and as subscription re-authentication is not something it would have the infrastructure to support. It said that if an annual reminder is deemed necessary, and there is no basis in fact that this is the case, then it should be an opt-out or a "good to know" message, which is more in line with consumer expectations as demonstrated in its research. However, it firmly believed there is no real need for this, as consumers already receive notifications related to exiting the service.

418. It said that for the charity sector, this would be catastrophic in terms of donations.

419. It noted that in reading the proposal there is also a suggestion that charity supporters have to go through a double opt-in each year, meaning that they couldn't even receive a message asking them to reply "YES" to continue with their regular gift.

420. It noted charity members are robustly regulated by the Fundraising Regulator and must adhere to their Code of Fundraising Practice. As such their services, which have attracted no complaints in the last year, do not need another layer of prohibitive regulation here.

421. It noted that the PSA have informally indicated that there is to be a higher ruling due on this issue from the Department for Business, Energy and Industrial Strategy (BEIS). Since there has been no public announcement of this, it is not aware of the initiative. It asked for formal confirmation that this is the case and the distribution of information related to it. It said that if there is to be a change of regulation at that level, which will affect all payment mechanics such as direct debit also, the PSA should wait for that regulation to be confirmed, rather than push it through now with the result that phone-paid services will be hugely disadvantaged.

422. It was also concerned that this proposal has not been the subject of an impact assessment by the PSA.

423. ***aimm*** made the following comments relating to with our assessment of the Fairness Standard against the general principles:

- not effective - the proposal for a 12-month re-authentication is not effective. Consumers do not have an expectation that they will have to opt in again to continue their access to their chosen service and this will result in confusion and loss of service for consumers who have actively and robustly subscribed.
- not balanced - consent to charge regulations already ensure that consumers know what they have signed up for and they have no expectation of opting in again after 12 months. Sending an additional message at one year is not an expectation and is not welcomed by consumers.
- not fair and discriminatory - the 12-month re-authentication discriminates against phone-paid service providers. When other payment mechanic providers are not under the same proposed rules, operator billing will naturally become a less attractive offering to those Merchants that have multiple payment methods for customers to use. Also, it said because this is not being

applied retrospectively it won't actually address the harm that this is trying to protect consumers from. It also noted the PSA have commented on cost but the real concern relates to loss of revenue via this channel and that the introduction of an opt-in renewal will increase attrition rates and income.

- entirely disproportionate - there is no longer an issue with unknowing subscriptions, consent to charge is robust. MFA means the risk of harm is no longer present and the PSA demonstrated at the May Industry Liaison Panel (ILP) meeting that complaints are at their lowest in PSA history (and there were precisely zero complaints for the charity sector which will suffer significant reductions of monthly donations as a consequence of this proposal).

- not transparent - the research that supports the proposition that consumers expect as 12-month re-authentication to a non-renewal product which has no service level change or price change has not been shared.

424. ***Mobile UK*** argued that the 12-month re-opt-in proposal is not justified and said that the PSA presented no evidence that this is a necessary measure or would be justified as part of the discussion document. It said it is not justified and is inconvenient and potentially confusing for consumers. It also said it has a clear indication from one large app store that they would exit the market, and this could ultimately have an adverse impact on consumer choice and enjoyment of services. It noted that suitable opt-out mechanisms already exist for consumers, including being able to exit a PRS immediately (draft Code paragraph 3.2.17). It also noted the proposed rule would put PRS at a competitive disadvantage to other payment mechanisms.

Charities

425. ***ActionAid UK, The Brooke Hospital for Animals, The Children's Society, Children with Cancer UK, Comic Relief, Poppyscotland, RSPCA, Save the Children UK, Shelter, The Society for the Protection of Animals Abroad (SPANA), St John Ambulance, UNICEF UK*** and ***one other charity respondent*** agreed a fairness standard is a good thing for consumers.

426. ***ActionAid UK*** did not agree with our assessment against the general principles and argued that charities should be exempt from the requirement for an annual re-opt-in. They did not believe that the issue of "loyalty penalties" is not a relevant consideration within charitable donations. This is because supporters are not signing up for a fixed period, can opt out at any point and their donation amount is never increased unless instructed by the donor. They were also concerned that sending a message requiring re-opt-in could constitute marketing and breach GDPR for most donors that have not consented. They argued there are very low levels of harm in charity PSMS, both single and regular. They also argued the existing mechanic is very clear at sign-up and is clear on how to cancel, including a double opt-in at sign-up. They, therefore, argued, the current proposal is impractical as it requires a double opt-in to be captured every 12 months.

427. ***British Heart Foundation*** agreed with the principle of introducing a new Fairness Standard. However, it felt that the proposals regarding the automatic cancellation of subscriptions, including donations and society lottery subscriptions, could lead to a significant attrition of charities' text giving donor bases and adversely impact donor experience. It argued this proposal is overburdensome and disproportionate for charitable donations where additional requirements already exist, and that they should therefore be exempted from this Requirement, as should society lotteries. Charities are already required to follow the PSA's special condition for recurring donations, as well as some additional text giving standards over and above those required by the PSA's Code, which are set out in section 10 of the Fundraising Regulator's Code of Fundraising Practice.

428. It noted the Fundraising Regulator's 2019/20 Annual Complaints Report showed that fewer than 130 complaints about text giving were reported to the 35 largest fundraising charities who use this method of giving, which represents less than 1% of overall complaints received. This report shows that 15% of these complaints were because of the frequency of messaging, which would be exacerbated by the PSA proposal. It also noted that the PSA's proposal was considered in line with the CMA's ongoing work around the loyalty penalty but said that this does not apply to charitable donations or society lottery subscriptions as no benefits are given to new subscribers as they may be in the commercial world, such as discounts for new customers.

429. ***One charity respondent*** welcomed the Fairness Standard and said that it was in line with its existing approach of being respectful, open and honest with its supporters in all its fundraising activities and following the Fundraising Regulator's Code of Fundraising Practice. It agreed with the PSA's aim to

improve overall consumer awareness when signing up to phone-paid services but believed that the existing measures in place for charity recurring donation services are already effective in ensuring supporters give informed consent.

430. It said it was specifically concerned about possible adverse consequences for supporters, charities and the text donation service if the requirement for annual re-opt-ins is applied to charity recurring donation services. It argued that because auto-renewal and price changes do not apply to recurring charity donations and unsolicited charging does not appear to be a risk or an issue for charity recurring donation services, these proposed changes should not be implemented for charity recurring donation services. It was worried that supporters sign up to a regular donation to charity on the understanding that their commitment will be ongoing and at the same amount unless they choose to SKIP or STOP. Supporters are likely to be confused and possibly disgruntled if the donation they have actively chosen to continue is automatically cancelled at the end of 12 months and they then have to re-sign up.

431. It said other donation payment methods do not expire automatically. Charity recurring donations are not for fixed periods, can be varied only by supporter instruction and cancelled at any time, therefore it did not believe charity donations would be in scope of any changes from the Competition and Markets Authority's (CMA) ongoing work. But, if any changes were to apply to charity donations, the PSA may wish to await the outcome to make any changes in line with the CMA.

432. ***Chartered Institute for Fundraising*** agreed with the intention behind this new Standard, but said that it was concerned that some of the new proposals will impact donor experience and donations, in particular, the proposal for annual re-opt ins. It said its members were very concerned about the negative impact this will have on the income from regular donations via text and donor experience.

433. It appreciated that this decision was not taken lightly and was based on research and CMA work. Nevertheless, it argued that neither of these pieces of research accounted for differences between donating to a cause and paying for a service. It noted that between 2019 and 2020, only 35 charities reported 130 complaints regarding SMS donations to the fundraising regulator, which has decreased by 22% from the previous year.

434. It also argued that other regular payment mechanisms such as direct debits, or subscription services for newspapers or streaming do not require consent to be provided every 12 months – even though these will be likely to be of higher value payments compared to text giving. It, therefore, questioned the need to introduce this proposal when it is not part of the normal experience of consumers who use a range of regular payments methods in their day to day lives.

435. It believed there were a number of alternatives that could help protect donors without negatively impacting charities' income. It argued that the current recurring donation special condition requirements are sufficient to allow them to opt out. It argued that if the PSA still felt there was a need for an additional confirmation every 12 months, it recommended adopting a similar opt-out method that mirrors these monthly reminders as this will keep the messaging to donors consistent.

436. ***Children with Cancer UK*** did not agree with our annual re-opt-in proposal which it argued would be detrimental to their regular giving via premium SMS (RGPSMS) programme. It was concerned that asking everyone to opt in every year would likely have a significant impact on how the amount of donors and subsequently the amount of research into childhood cancer it is able to fund. While it noted that its donors are committed and want to donate, it said that asking for an opt-in rather than an opt-out means people could miss it, become distracted or simply forget to reply. It said it provides clear information at the point of sign-up relating to how to opt out and that it also provides information on how to do this on its website and offers its supporter care phone number, where the team can assist with stopping the subscription. It, therefore, asked if the PSA does go ahead with this proposal whether it would be possible to consider a charity exemption.

437. ***The Children's Society*** was concerned about the requirement to ask charity regular donors via SMS to opt in every 12 months. It said it has many regular donors who give to it monthly by direct debit, at amounts far greater than those who give via SMS, and yet there is no requirement for it to seek an opt-in every 12 months from its direct debit payers. It said it would appear inconsistent and confusing then, to require this for this one payment method only.

438. It also noted charities are already required to follow the special conditions for recurring donations, which give individuals the opportunity to decide whether to maintain or cancel their donation, as well as some additional text giving standards over and above those required by the PSA's Code, which are set out in section 10 of the Fundraising Regulator's Code of Fundraising Practice. It also said it has

not received a single complaint in the last 12 months about this giving method and indeed, across the sector as a whole, volumes of complaints are low.

439. It also said it is likely that this new proposal will decrease the number of charitable donations received via this method. It recommended that charitable donations should be exempted from this proposal.

440. ***InstaGiv*** argued that consumers who donate to charities using regular giving SMS should not be required to opt back into the service every year. It said this is because it would have a severely detrimental impact on charity donations as it is confusing for consumers who understand the concept of opt-in and opt-out but not re-opt-in.

441. ***Macmillan Cancer Support*** said it has significant concerns about the requirement for people using recurrent donation services to have to re-consent every 12 months. It said this would be impractical and unnecessarily costly for charities to implement. It also believed this could have a damaging impact on Macmillan's income and said that in a worst-case scenario it would lose approximately £50,000 per year. It said that while it recognised the intention to give donors greater control, this could still be achieved through using an opt-out model instead. It also said that should the PSA move forward with this proposal, Macmillan is likely to no longer see regular giving via text as a viable source of income, meaning it would inevitably reduce its investment in this area.

442. ***One charity respondent*** said that donations through regular PSMS generate only a tiny number of complaints, with just two recorded since January 2019. It said that if supporters are required to opt in every 12 months, this would increase costs and would not save money in terms of handling complaints as the Code suggests. It also referenced the Fundraising Regulator's 2019/20 Annual Complaints Report (see paragraph 428).

443. It said that the specific concerns noted in connection with the CMA's work on loyalty penalties do not apply to recurring donations as no financial benefit is provided to new subscribers unlike some in the commercial transactions such as discounts to new customers. The donation amount is set by the donor and they are in control of whether they increase or decrease the amount they give or stop altogether.

444. It also noted that if a supporter signs up to a regular SMS gift, they must first agree verbally over the phone to setting up the gift. This is followed by a message the supporter must reply to, to activate their recurring donation. This initial double opt-in ensures that gifts are only set up by supporters who are truly happy to donate in this way.

445. It said that it already goes beyond the current minimum requirements for supporter care for those who are giving via the regular SMS channel. In addition to the messages required by the special conditions for recurring donations it also sends another message every three months. This message reminds supporters that they can stop giving at any time and explains how to do this. Because of this, it argued that supporters are fully aware at all times that they can stop giving. To ask supporters to opt in on an annual basis alongside these other messages will increase attrition and impact giving to good causes.

446. ***Save the Children UK*** disagreed with the requirement for consumer consent to be re-established every 12 months for recurring donations. It argued this would be ineffective in advancing the aims of the Fairness Standard. It argued there are significant differences in the relationships consumers share with charities in comparison to businesses. While it appreciated the potential benefits of seeking a uniform approach, it believed this instance is an oversimplification which would lead to unnecessary detriment for the charity sector by significantly impacting this donor base.

447. It also argued the existing mechanic for recurring donations is very clear and so the introduction of an automatic annual opt-out risks causing confusion and may lead to donations being cancelled unintentionally if the donor does not realise that their action is required to continue.

448. It said it is unable at this stage to accurately model the potential impact of an automatic opt-in on its PSMS donor base, but it believes it would lead to a significant and long-term reduction. It said it is challenging to reconcile this with the suggestion that part of the reasoning behind this requirement is based on the CMA's work on the loyalty penalty which is not relevant to charitable donations. It also noted the lack of consideration given to this recommendation also appears to contradict the tone of the PSA Consumer Panel. On the topic of clarity for consumers in a purchasing environment, the PSA's Consumer Panel noted that "a degree of proportionality should be built in, for example with charity donations."

449. It also said there remains an outstanding concern regarding GDPR and the Privacy and Electronic

Communications Regulations (PECR). Sending a message requiring a re-opt-in could constitute marketing and therefore require SMS marketing consent. There is currently no proposed mechanism for those donors who have not provided SMS consent to be asked to continue their subscription.

450. ***UNICEF UK*** did not agree with our proposal for annual re-opt-ins for all subscription services including recurring donations. It said this presented a significant concern and noted that: there are very low levels of complaints relating to phone-paid charity donations; there is no set renewal period of one year for a recurring phone-paid donation; the CMA's current review of subscription traps is not intended to apply to charity donations. No other payment mechanism requires this – the proposed changes do not apply to any other payment types such as direct debits, standing orders or credit card regular donations.

451. ***The Brooke Hospital for Animals, Comic Relief, Open Mobile Global, Poppyscotland, RSPCA, Shelter, SPANA*** and ***St John Ambulance*** did not agree with our assessment against the general principles and argued that charities should be exempt from the requirement for an annual re-opt-in. They did not believe that the current CMA's current review of subscription would be affected as the issue of "loyalty penalties" is not a relevant consideration within charitable donations. This is because supporters are not signing up for a fixed period, can opt-out at any point and their donation amount is never increased unless instructed by the donor. They also noted that if the CMA were to introduce this requirement and to apply it to charity donations, then this change would affect regular giving through all payment mechanics. They argued there is, therefore, no need for the PSA to require this for PSMS only in the meantime, as they will damage the PSMS regular giving market. They were also concerned that sending a message requiring re-opt-in could constitute marketing and breach GDPR for most donors that have not consented. They argued there are very low levels of harm in charity PSMS, both single and regular. They also argued the existing mechanic is very clear at sign-up and is clear on how to cancel, including a double opt-in at sign-up. They, therefore, argued, the current proposal is impractical as it requires a double opt-in to be captured every 12 months.

452. ***Shelter*** also argued that although it is hard to quantify, it had little doubt that these proposed changes are likely to have a serious detrimental impact on the amount of funds that it would be able to raise through this channel and consequently on its ability to help those people who are facing housing and homelessness issues.

453. ***Five charity respondents*** agreed a Fairness Standard is a good thing for consumers. They did not agree with our assessment against the general principles and believed charities should be exempt from the Requirement for annual re-opt-ins. They said the changes to ongoing SMS regular giving would be highly detrimental to charities which use this channel and would lead to a significant loss at each time of asking. They noted that they have received zero complaints in this area in the last financial year, and so do not accept that this is an area which requires additional measures to prevent harm.

454. ***Another charity respondent*** said that while they welcome our review of the Code and are supportive of many of the initiatives within the draft Code, they strongly object to the proposal for annual re-opt-in. This was for the following reasons:

- out of scope – they did not believe that the regulation, which seeks to address a problem with "yearly contracts" auto-renewing, applies to charity subscriptions. They noted it has monthly SKIP and STOP options for consumers, SMS receipts and opt-outs at any time. They also said there is no set renewal period of one year.
- no problem to solve – they noted the PSA complaint figures show zero complaints for the last year and that they have had zero complaints over the last five years. There is therefore no requirement for change in the regulations, at least with regard to charitable donations.
- confusing for consumers – they also said those who donate are used to receiving opt out SMS messages around SKIP and STOP. To then receive an opt-in request is counter intuitive. Equally the PSA themselves have recently put out warnings about clicking on links in text messages that you are not expecting. A high number of users will not respond to an opt-in message that they are not expecting and charities will suffer financially because of it.
- expenditure – they also said that the PSA stated it saw no evidence that an introduction of a 12-month opt-in would lead to increased costs, because any costs associated with obtaining an opt-in would be offset by the reduced costs associated with less consumer complaints. It said that, as a sector, charities have experienced zero complaints, therefore there will be additional cost to it due to the proposed change in processing donation opt-ins.

- revenue - they also said the PSA have commented on cost but the real concern relates to loss of revenue via this channel. The introduction of an opt-in renewal will increase attrition rates and income, which will leave charities investing money in other sources of donation which have a better return on investment.

Consumers and consumer advocates

455. ***CCP and ACOD*** said they were pleased to see that "fairness" has been incorporated into the PSA's regulatory Standards. Where consumers are becoming ever more reliant on mobile-based services, providers need to ensure that consumers are treated fairly and protected in the market.

456. ***PSCG*** said that much of what it said in relation to the Transparency Standard also applies to the Fairness Standard and that it sees a disproportionate number of vulnerable consumers affected by unfair practices in the industry (see paragraphs 350 - 352). Such consumers find it difficult to get fair treatment and rarely obtain refunds for unfair charges.

457. It welcomed the proposal to require a valid opt-in every 12 months which it argued would help reduce "bill shock". It argued that evidence of the initial consent to charge or of any subsequent usage of the service should be held by the network operators and provided to consumers on request.

458. It did not agree with our assessment of the Fairness Standard against the general principles and noted that fairness is very subjective and that the current system is unfair to consumers. It argued that the Fairness Standard needs to correct this imbalance and that consumer law makes it clear that where the existence of a contract is in dispute, the burden of proof rests with the merchant to show the existence of that contract. It said the Code needs to properly reflect that aspect of the law and that network operators should not be enforcing charges which they cannot prove are legitimate.

459. ***Which?*** supported the proposed Fairness Standard and efforts made to reduce and prevent misleading promotions and misleading practices by providers. It agreed that the introduction of MFA and re-consenting after 12 months for subscription services should help reduce the harm of consumers unwittingly paying for recurring charges. It acknowledged that there are concerns about detrimental impacts of MFA on phone-paid services among industry, particularly on charity donations, but noted the PSA's evidence that charity donations via phone-paid services have continued to increase despite introduction of MFA requirements. It said it is important that consumers have consented to charges and MFA will help providers establish and demonstrate this consent. It thought any risk of placing a burden on providers that is disproportionate to the harm is managed by limiting the MFA requirements to subscription services and recurring payments and excluding single payments and voice-based services from the requirements.

460. Regarding the proposed 12-month re-opt-in process, it supported the requirement for providers to seek consent from consumers again after a period of time for recurring charges but did not have a strong view on whether 12 months is the optimal period. It noted the PSA appears to have considered a range of alternatives and has landed on 12 months as a balanced option. It recommended that this time period is considered in the context of other consultation responses and the different circumstances when this new requirement would apply. It said the PSA should conduct a review after implementation to ensure this new process is working as expected and that 12 months is appropriate.

PSA's assessment of inputs received

461. Respondents were broadly supportive of our proposal to introduce a new Fairness Standard. It was agreed there is a need for a Fairness Standard, and that it is important that consumers are treated fairly throughout their experience of using phone-paid services. However, respondents did not agree with all of the proposed Requirements.

Treating customers fairly

462. Several respondents commented on draft Code paragraph 3.3.5, stating that more clarity is needed about what constitutes excessive use. We agree with these comments and intend to provide additional clarification in guidance. This will assist providers by clarifying what may be considered as excessive use and provide examples of what providers can do to identify it and protect consumers from "bill shock".

463. However, it is important to note that draft Code paragraph 3.3.5 is not a new Requirement. It already exists in Code 14 (rule 2.3.6). The only difference between the existing rule and draft Code paragraph 3.3.5 is the terminology used to describe the regulated parties. Also, guidance on excessive use already

exists and has done for many years within Enabling consumer spend control. Taking all of this into account, we do not consider that this particular provision should result in any additional burden on stakeholders as it is not new and, therefore, providers should already be familiar (and complying) with it.

Point of purchase

464. One respondent commented that draft Code paragraph 3.3.7 is drafted too widely and captures services that are charged via an IVR but where the content is provided online. To be clear, the intention is not to capture IVR services in general. However, where a service combines the use of an IVR and online content, we consider that this has the potential to confuse consumers. Accordingly, we do not agree that we should amend this paragraph, and we remain of the view that providers operating these types of services should be required to obtain MFA. We would also point out that this is not new and already exists in special conditions for subscription, recurring donations, society lotteries, online adult and online competition services.

465. We have also considered comments relating to MFA relating to draft Code paragraph 3.3.8 and the suggestion that this does not allow for technical advancements. We do not agree. In particular, we note that we have drafted these Requirements in order to incorporate authentication methods which are currently widely used in other digital payment markets, including use of biometrics. Also, it is important to note that if future amendments are needed, our new Code amendment powers (see paragraphs 1123 - 1124) will enable us to do this quickly and efficiently (and in consultation with stakeholders).

466. In relation to comments received about draft Code paragraph 3.3.8(a)i and what is meant by "verified email address", we want to be clear that our intention is to ensure that consumers can only sign up to services with a valid and verified email address. In this context, we expect that providers should be taking reasonable steps to verify email addresses to the extent they are able to. Taking this into account, we have updated draft Code paragraph 3.3.8(a)i to provide this additional clarity and be clear that our expectations are only that providers should verify the validity of email addresses at the point of sign-up, using reasonable procedures to do so. Again, and to be clear, this is not a new requirement for subscriptions, recurring donations, society lotteries, online adult and online competition services.

467. We also note that some respondents stated that Apple software auto-populates PINs within webpages (draft Code paragraph 3.3.8(b)ii). These respondents asked for confirmation that providers will not be held accountable for any non-compliance where a PIN is auto-populated by a consumer's operating system. Our understanding is that PINs are not auto-populated within webpages but that, rather, Apple software and other operating systems are able to auto-copy a PIN. However, it is still necessary for the consumer to paste/input the PIN into the relevant field on a webpage and confirm/take positive action. Accordingly, we do not agree that this functionality is incompatible with the wording of draft Code paragraph 3.3.8(b)ii.

468. One respondent (charity) expressed concern about draft Code paragraph 3.3.10 and that it is unlikely that a confirmation message sent to a consumer following a one-off donation would allow a charity to capture marketing consent and enable it to convert to a recurring donation. It requested guidance on how conversion to recurring donation could work in practice. Again, we note that this is not new and currently exists in special conditions for recurring donation services. It is also important to note that this Requirement does not prevent the ability for providers to convert donations from a one-off donation to a recurring donation. It is simply stating that where they choose to do so, they must obtain specific consent from the consumer that they agree to this. The issue of marketing consent is not a Code matter and, if providers opt to do this, then they will need to obtain their own legal advice on compliance with data protection laws and any other applicable legislation or regulation.

SKIP command

469. We note that many charity respondents commented that they already provide a monthly reminder to recurring donations 24 hours before the monthly donation is taken. The reminder SMS allows donors to reply with the keyword SKIP if they wish to skip their monthly donation. If SKIP is not sent, then the monthly donation is taken as usual and followed by an SMS receipt. This has been an acceptable practice for charities for several years and currently exists under Code 14 within the special conditions for recurring donations.

470. We note that we did not include this provision within our draft Code. This omission was neither proposed nor intended and was therefore done in error. We continue to believe that the SKIP function for charities continues to perform an important functionality and provides a positive experience for consumers and charities alike. For consumers, they are clearly informed about their recurring donations

and given the opportunity to "skip" a payment on a monthly basis without having to opt out and opt back in. For industry, this is beneficial as they do not lose their subscriber base. This, combined with MFA and receipting requirements, means that consumers who donate on a recurring basis are clearly informed. On this basis, we have decided that it is not proportionate to impose additional opt-in or reminder requirements on recurring charity donations. To be clear, therefore, recurring charity donations are exempted from the additional reminder Requirement (draft Code paragraph 3.3.11).

471. We do not believe that reinstatement of the SKIP provision will cause any negative impact on the charity sector or donors. In particular, we note that this provision has existed in Code 14 and was excluded from our draft Code 15 in error. However, we will continue to review the operation, and effectiveness, of the skip function to ensure it is still providing a valuable purpose for consumers.

Re-authentication for consumer consent every 12 months for all subscription services, including recurring donation services

472. We have carefully considered all stakeholder responses on our proposal to introduce a requirement for consumers to have to re-opt into subscription services (including recurring donation services) every 12 months (draft Code paragraph 3.3.11). Our proposal emerged as the key area of concern for industry stakeholders who attended our webinars. We have also considered the additional evidence which stakeholders submitted in the form of commissioned research and commercial data to support stakeholder arguments. We have also considered the proposals published for consultation by BEIS in July 2021 in relation to subscriptions more generally.

473. The majority of respondents were strongly opposed to this proposal. They expressed concerns about the impact that this would have on the phone-paid sector and, in particular, the likelihood of significant reductions in revenue disproportionate to the level of harm being removed especially, but not exclusively, in the charity sector.

474. On balance, and in light of stakeholder feedback, we have decided not to require an annual re-opt-in for subscription services. In particular, we have had regard to feedback from industry and charities that this proposal would be highly detrimental to operator billing and to charity donations. We have also had regard to evidence from aimm's research and, also, anecdotally from industry that this does not meet consumers' expectations. In particular, it has been argued to us that when consumers now sign up to a service (and bearing in mind the protections of MFA and receipting), there is an expectation that services will continue and an interruption to service would be very unwelcome.

475. Taking all of this into account, we propose instead to require all subscriptions services except recurring donations to charity services to send an annual subscription reminder providing details of how to opt out of the service. Where a consumer enters into a subscription service that lasts for a defined period ("term-based subscription"), a reminder must be sent to the consumer at least seven days and no more than 30 days before the end of the subscription period. Where a consumer enters into a subscription service that continues for an indefinite period, a reminder must be sent to the consumer within 14 days of each anniversary of the start of the subscription date the consumer entered into the subscription service. We propose to exclude recurring donations from this requirement as the SKIP function (which we omitted in error from the draft Code (see paragraphs 469 - 471) already provides consumers the option to skip or opt out of a donation in a message separate from receipts.

476. We have considered the introduction of a requirement to end inactive subscriptions on a model similar to the previous industry 120-day rule in terms of its PayForIt (PFI) scheme rules, particularly in light of the proposals published for consultation by BEIS in July 2021. However, and having had further discussions with industry, it is clear there are genuine practical difficulties in implementing this rule. We are, therefore, not proposing to do this at this stage.

477. We have also taken account of aimm's research which suggests that this requirement is addressing a relatively small problem – it suggests 1.5% of subscriptions are unwanted – and that consumers have the ability in phone-paid services to get out of a subscription or recurring payment quickly and easily via the STOP function. We also note that BEIS' impact assessment for its consultation puts the level of unwanted subscriptions somewhat higher (4 - 10% with 7% as the median) but this may vary according to subscription type.

478. Also, we note that stakeholders have argued that this provision is not needed now. Specifically, it has been argued that MFA and receipting with improved platform security have massively reduced the consent to charge problems that have led to some of the harms we have sought to address through our previous subscriptions work (including consumers noticing subscription payments for the first time

many months or even years after the sign-up event). Some industry stakeholders have told us that complaints to them about subscription services have reduced by over 90%. This is broadly consistent with our own experience – we received around 20,000 complaints in 2018/19 with over 90% being about subscription services. This reduced to just over 5,000 complaints in 2020/21 and has continued to fall throughout 2021 – we are projecting that we will receive around 2,500 complaints in 2021/22, with fewer than 40% of them being about subscription services.

479. In light of this, we are persuaded by the responses that the current protections in place and, in particular, the special conditions introduced in November 2019 and replicated in the draft Code requirements are providing sufficient protection now. We are also persuaded that some of our new Requirements under Code 15, including DDRAC, systems and supervision, should be sufficient to prevent the problem of subscriptions with no or contested consent to charge recurring at least in the medium term.

480. We have also had regard to the proposals BEIS has included in its consultation. Industry argued that phone-payment should not be unduly disadvantaged by regulation in comparison with other payment mechanisms. We note that the BEIS proposals do not include a requirement for a positive re-opt-in at the end of a subscription period, but instead a reminder including details of how to opt out. Our revised proposal mirrors the BEIS proposal.

481. The BEIS consultation also includes a proposal to introduce automatic termination of inactive subscriptions. However, the BEIS proposal is that the period of inactivity is likely to be considerably longer than 120 days. Considering the technical difficulty in implementing such a proposal for phone-payment and the evidence that the problem it would address is relatively small we are, therefore, not proposing to introduce requirements relating to inactive subscriptions in Code 15. We consider this is an area where best practice and/or guidance could be developed without having the difficulty of defining either in Code or guidance precisely what is meant by "inactive". We, therefore, want to work with relevant stakeholders (consumer and industry) in developing relevant best practice and/or guidance in this area. Phone-paid services providers will, in any case, have to comply with whatever new general provisions that may arise from the BEIS proposals.

482. We will continue to monitor this issue and if we have reason to believe the problem of unwanted subscriptions resulting from problems with consent to charge is recurring, or, if there are other developments, such as the BEIS proposals which we need to take account of, then we may revisit this particular provision including whether there is a need to amend the Code.

Final decision

483. Having considered stakeholders' comments, we have decided to implement the proposals set out in relation to our proposed Fairness Standard and Requirements (draft Code paragraph 3.3), as set out in our consultation document, with the following revisions:

- we have amended the wording relating to verified e-mail addresses to "their email address as verified by the merchant provider" to be clear that this is about steps which the provider takes to verify that email addresses are valid (draft Code paragraph 3.3.8(a)(i))
- we have amended the draft Code paragraph 3.3.8(f)(i) to be consistent with paragraph 3.3.8(a)(i)
- we have included the "SKIP command" function where a recurring donation service enables donors to skip a monthly payment, and which was omitted from the draft Code in error (now Code 15 paragraph 3.3.11)
- we have removed the Requirement for subscription services to require consumers to re-opt into such services every 12 months (formerly paragraph 3.3.11). This has been replaced by Requirements that all term-based and all ongoing subscriptions (except recurring donation services) must send a reminder at least seven days (and no more than 30 days) before the subscription ends, or within the 14 days preceding each anniversary of the start of the subscription, respectively, providing details of how to opt out of the service (now Code 15 paragraph 3.3.12).
- we have made consequent changes to paragraph numbering from Code 15 paragraph 3.3.11 onwards.

Assessment framework

484. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Fairness Standard and Requirements against the general principles which we set out in the discussion document. A number of these we have addressed in responding to various responses to questions 17 and 18 above and, in particular, on the point of re-authentication for consumer consent every 12 months for all subscription services, including recurring donation services.

485. Having done so, we consider that our new Fairness Standard and Requirements meets these tests, as we set out below:

- **effective** as they have been designed to improve overall consumer awareness of phone-paid services by enabling them to make fully informed decisions about purchases before charges are incurred and preventing instances of uninformed consent. Of particular relevance, we would highlight the following:
    - we are broadening Requirements aimed at preventing consumers from being misled, to all services. Currently, there are very specific Requirements which relate to ICSS and are effective in reducing consumer harm and we consider that these could be usefully extended to other forms of phone-paid services.
    - we currently require MFA for subscription services through special conditions. This has proved to be highly effective in dealing with consent to charge issues for subscription services. In 2019/20 we received 9,492 complaints about subscription services, and in 2020/21 the figure dropped to 2,636. We consider that MFA should be extended to all services which are accessed fully or in part via an online gateway. This will provide enhanced consumer protection from unsolicited charges and provide a level playing field for online-based services. We also consider this should prevent the issue of providers deliberately migrating their business models to offer higher priced one-off transactions to evade regulation. This will also more strongly align the consumer purchasing experience of phone-paid services with other digital payment mechanics such as PayPal, Apple and Google Pay where MFA is widely used, including account and password, PIN and biometrics.
- **balanced** due to the potential harm to consumers and the industry which we are looking to address through this proposal. It will benefit firms through enhancing the reputation of the industry as a whole which in turn should lead to healthy innovation and consumer choice by creating a climate which is attractive to reputable firms with good products or services who are considering entry to the market. We also consider that by consolidating all current rules, special conditions and guidance relating to fairness into a single Standard, this will provide a simplified approach to regulation, making compliance easier. Providers should be able to understand more easily what they are expected to do.

  This is particularly the case with regards to MFA which already exists for subscription services but for which we are proposing to extend to all services which are accessed fully or in part via an online gateway. We have listened to stakeholder feedback and are not proposing MFA Requirements for voice-based services or single-transaction services that are accessed via PSMS.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. We are not making any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

  There are some differences of approach in the Requirements relating to the scope of MFA but we consider these differences are fair and do not unduly discriminate between providers. The new Requirements will also create a level playing field for all providers of online-based services and subscription services. This will aid healthy competition as providers will not be able to benefit through avoiding elements of regulation by offering one form of online-based service over another.
- **proportionate** as they will address actual and potential harm relating to unknown sign-ups by introducing friction and authentication at the point of purchase for online-based services as well as subscriptions, including recurring donations, and society lotteries. The costs of implementing

the fairness Requirements should be minimised as many providers already have relevant capabilities in place. The PSA is not looking to introduce any Requirements that are unfamiliar to providers. We have also listened carefully to stakeholder arguments that requiring a valid opt-in every 12 months would be disproportionate in relation to other payment mechanisms. In view of our assessment of the effectiveness of existing protections, we have decided to modify our proposals and align them with proposals that BEIS is making more generally for subscriptions – namely a requirement to notify consumers that a subscription is due to auto-renew or is continuing and provide details of how to opt out.

- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above. In addition, the effects of the changes are clear on the face of the new Standard. We, therefore, consider that the Code and this accompanying statement clearly set out to industry the Requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Customer care Standard

Standard

Consumers must receive excellent and timely customer care, including the resolution of their complaints.

Rationale

This Standard aims to ensure that consumers have a good experience in their dealings with providers of phone-paid services. Providers should offer a high level of customer care and when things go wrong, complaints should be resolved promptly and effectively. Consumers should have a positive experience of seeking and obtaining a refund.

Background

486. Code 14 contains a number of requirements relating to how providers must deal with complaints, including a clearly defined Outcome 2.6 (rule 2.6) and supporting rules. These rules require that consumers have complaints resolved quickly, easily and fairly and that any redress is also provided quickly and easily.

487. The current complaints handling Outcome states:

"That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily."

488. There are rules which support the complaints-handling Outcome. These include:

- the need to have appropriate and effective complaints processes which are free or low-cost
- the need to handle consumer complaints promptly, providing refunds promptly and in an accessible manner
- the need to signpost to the PSA to escalate complaints where consumers remain dissatisfied with the handling of their complaint
- providing relevant information on the handling of any consumer complaint to the PSA on request.

489. We have also published guidance on complaint-handling which clarifies our expectations.

490. In January 2020 we published a consultation on new general guidance to enable providers to meet consumer expectations and improve the experience of receiving refunds for phone-paid services.

491. We received 12 responses to the refunds guidance consultation, and we identified the key themes in our consultation document.

492. In March 2020, we announced that, due to the Covid-19 pandemic, work on our consultation on new refunds guidance would be suspended and that it would be progressed instead under the Code 15 consultation.

Consultation proposals

493. We proposed to introduce a new Customer care Standard to encompass Requirements relating to customer care, complaints handling and refunds.

494. We proposed to integrate the following provisions from our existing complaints-handling guidance as supporting Requirements within the proposed new Standard:

- that relevant providers must keep consumers informed about the status of any complaint and/or associated refund request (draft Code paragraph 3.4.3)
- that the relevant provider in the value chain with primary responsibility for customer care must respond to consumers who contact them promptly and in any event within five working days (draft Code paragraph 3.4.4)
- that the relevant provider in the value chain with primary responsibility for customer care must use all reasonable efforts to resolve all PRS-related issues raised by a consumer (draft Code paragraph 3.4.5)
- that relevant providers must provide clear information to consumers about how to contact them, including: name as registered with the PSA and details of the service the consumer has been charged for; and contact details and hours of operation (including customer care details and website) (draft Code paragraph 3.4.9).

495. We also proposed to introduce the following new Requirements:

General

- customer care facilities are available to consumers as a minimum during the normal business hours of 9am to 5pm, Monday to Friday (excluding public holidays) (draft Code paragraph 3.4.2)
- taking all reasonable efforts to resolve all PRS related issues raised by a consumer promptly and in any event within 30 working days of the initial consumer contact (draft Code paragraph 3.4.5)
- customer care, complaints handling, and refund policies are clear and publicly available when handling complaints (draft Code paragraph 3.4.10)
- the need to consider the particular needs of consumers who are vulnerable and who may be likely to suffer harm or detriment as a result (draft Code paragraph 3.4.11).

Refunds

- where refunds are provided to consumers, they must be provided promptly and using a method that is easily accessible for each consumer (draft Code paragraph 3.4.12)
- any decision as to whether a consumer is owed a refund is made promptly and that the basis for the decision is clearly communicated to the consumer (draft Code paragraph 3.4.13)
- once agreed, all refunds are processed within 14 working days (draft Code paragraph 3.4.14)
- where a refund is due, the merchant must take responsibility for providing it in the first instance. Where they are unable to do so, they may enter into arrangements with an intermediary or network operator to provide refunds instead or on their behalf (draft Code paragraph 3.4.15).
- where consumers pursue a complaint and seek a refund, they are not required to expend undue time, effort or money in doing so (draft Code paragraph 3.4.16).

496. We asked the following questions:

Q19: Do you agree with our proposal to introduce a new Customer care Standard? Please provide an explanation as to why you agree or disagree.

Q20: Do you agree with our assessment of the proposed new Customer care Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

497. ***BT*** said it agreed overall with the proposed Standard. It commented that the approach is aligned with its existing enquiries and complaints handling policies, procedures, and staff training to resolve issues promptly and effectively. It also agreed customer care and complaint handling policies need to meet the needs of all consumers including vulnerable consumers. In respect of guidance for refunds and customer care it asked for clarification in the following areas:

    - responsibility for customer care requirements in the PRS value chain in respect of app store business models. This will also address any potential for duplicative reporting of complaints which are already submitted to Ofcom.
    - confirmation of the PSA's view that the resolution period will start at the initial consumer contact with the PRS provider in the value chain who has primary responsibility for customer care.

498. Overall, it broadly agreed with the PSA's general principles assessment for the Customer care Standard.

499. ***Telecom2*** said a Customer care Standard is long overdue, and it will help to improve some of the poor care that exists and damages the industry. It said the definition of a complaint needs clarifying. It said it would be happy with spontaneous complaints addressed to providers or PSA but the comments on social media and forums should not be counted.

500. In terms of Q20, it said the following:

    - not entirely effective and there will need to be a strong consumer education programme to ensure that consumers know how to take advantage of the care that is available to them
    - balanced provided any variables in how complaints are reported are resolved and only proper complaints are considered when assessing compliance
    - fair and non-discriminatory as long as providers are held to the same standards as merchants in other industries
    - proportionate dependent on if there is consistency in how the Standard is applied, starting times and points of entry into the customer care system for example, and takes account of what can be a complicated process through the value chain
    - partly transparent subject to the comments above.

501. ***VMO2*** broadly agreed with the proposal to introduce a new Customer care Standard. It made a number of comments regarding the assessment of the proposed new Customer care Standard against the general principles. It said the definition of a complaint (draft Code paragraph D2.17) alongside draft Code paragraph 3.4 on Customer care may change the existing complaints process which has been in place for many years at the MNOs. It said its process is to ensure the customer has the information available to them to be able to contact the merchant directly should they have any query or complaint. The merchant is best placed to handle these queries or complaints because they have all the specific information available to them regarding the charges. It asked for clarity relating to draft Code paragraph 3.4.4 and, in particular, that the five working days would begin from receipt by the relevant merchant provider. It suggested a two-stage process, allowing the relevant merchant provider to rectify the issue with a customer, which would initially be considered an expression of dissatisfaction. Should there continue to be an unresolved issue then a formal complaints process can be initiated which can include a formal escalation to the MNO. This also gives flexibility to customers who have their queries answered adequately at the outset and do not want to be part of a formal complaints process.

502. ***Vodafone*** noted the PSA has introduced a new definition of a complaint (draft Code paragraph D.2.17) seeking to align it to Ofcom definitions. However, Vodafone sought clarification relating to draft Code paragraphs 3.4.4 and 3.4.5. It said it is important that the PSA makes it clear that it is the merchant who has primary responsibility for customer care, which will allow industry to continue the recent significant improvements in complaint handling.

Level 1 providers

503. ***Donr Ltd*** said that while it was supportive of the proposal to introduce a new Customer care Standard,

draft Code paragraph 3.4.1 states enquiries and complaints are responded to at no cost to the consumer, while Code 14 states "free or low-cost". It said, at face value, this would appear to suggest all helplines are moved to an entirely free to call number, rather than a number range that comes out of any inclusive minutes. It said that the PSA should make clear in the guidance, the intended helpline number ranges that can be used. Looking at the latest government guidance, to meet the literal meaning of this clause charities would need to solely use 0800/0808 numbers rather than the 01/02/03 number ranges currently in operation. This extra cost to charities should be justified, given the negligible level of calls received but extra costs involved. It also argued the prevailing sentiment of the Customer care Standard is to place the intermediary and merchant at the heart of the customer care process, and that this goes against the expectations of consumers.

504. It did not believe that draft Code paragraph 3.4.1, as currently stands, meets the balanced view and said that if this was to include low-cost then it believes it would be adequate.

505. ***Infomedia*** did not agree with the drafting of the last sentence of the rationale which pre-supposes an entitlement to refund. It argued that the drafting must be tempered to include wording to recognise that there is no automatic entitlement to a refund, and the positive experience should be subject to that entitlement being established in a fair and reasonable investigation of a customer's concerns.

506. ***Mobile Commerce & Other Media Ltd*** agreed the introduction of a Standard specifically in relation to customer care on the whole would be beneficial to the industry. It said it provides clear requirements on how all consumer complaints should be dealt with, including prescribed times and is clear for the consumer to read and understand how their issues should be dealt with. It was concerned, though, about the use of the word of "excellence" and said that Standards need to be clear and definable and "excellent" is not a definable word in this instance. It also noted the Requirements for refunds have changed and was concerned that the PSA have overly complicated the Requirements in this regard.

507. In terms of Q20, it argued, the Future Sight research which was published and referenced to in the Refund Consultation was not objective. It also raised concerns that the 12 responses given to the PSA have not been published and is therefore not in keeping with the PSA's test of transparency. It also expressed concern about the issue of "no-quibble" refunds being discussed in the context of the discussion document albeit noted that the PSA had opted not to include this proposal as part of its Code 15 proposals and supported this. It also said while it is supportive of the increased definition within the draft Code which includes the use of time scales for people to adhere to, there still remains some ambiguity, particularly in relation to draft Code paragraph 3.4.16 in terms of a definition of what the PSA would consider "undue time, effort or money". It also asked for additional clarity about the term "resolution". It was also concerned that the PSA did not address the issue of Alternative Dispute Resolution (ADR) in their assessment of inputs received and there is no mention or provision of it in the draft Code. It also noted that draft Code paragraph 3.4.2 requires customer care facilities to be available between a specified time. It noted a customer care facility is not defined, so it said it presumes given the PSA's own customer care facilities, this is not required to be a phone line, but instead can be an online support forum, whereby a query is submitted via an online form.

508. ***One industry respondent*** agreed, with the addition that this is an example of where further guidance and clarity is needed. It noted the definition of a complaint requires it to be identifiable to it, and it would be unreasonable to expect a company to act on a complaint that meets the definition but that it could not reasonably be aware of. It said that, as an aggregator, it handles escalations of complaints about its customers services and are not the service provider. It thought this needed further clarity.

509. In terms of Q20, it said that this is dependent on the Standard being tidied up and clarified.

Broadcasters

510. ***Global*** did not agree with our proposal to introduce a new Customer care Standard. It noted in relation to draft Code paragraphs 3.4.5 and 3.4.14, this sets out timelines for resolving customer contacts/ refunds but makes no provision for the fact that a customer needs to provide necessary information within a timely manner to in order to facilitate these working days' limits. It said it would also like to a tighter definition of the term "complaint" and how a complaint needs to be submitted before it is deemed necessary to resolve it, i.e. is a mention on social media a complaint?

Trade associations

511. ***aimm*** agreed that customer care is important and should be to a high standard but that it has concerns over the definition of a complaint and there are several areas which needed further clarity. Firstly, it

said this is a loose definition, and could include comments on social media, informal discussions or opinions that are broadcast via any medium including public forums. It, therefore, argued a tighter definition is required that defines a complaint based on how it is made and who it is made to. It also said timescales around complaints also require clarification and that the complex nature of our value chain makes this difficult to police. It therefore requested more clarity that delineates timescales based on how a complaint is made, and whether they have approached the correct respondent to that complaint. Additionally, it said provision should be made for consumers who do not respond in a timely fashion to requests for more information needed to investigate a complaint. It also sought assurance that there will not be duplication or contradictions to the already agreed complaints process in place with Ofcom.

512. ***aimm*** made the following comments relating to with our assessment of the customer care standard against the general principles:

- partly effective – it was unsure that as a result of the proposed changes, consumers should know who to contact. It noted there is no customer education piece accompanying this proposal, so it did not see any reason why it will help consumers initially know who to contact.
- potentially balanced - as long as the process of "starting the clock" on a complaint is clarified and takes into account its complex value chain and the process of "passing over" of complaints to the correct recipient of such complaints that is accepted practice.
- potentially unfair and discriminatory - if complaints made on social media or in open public forum are designated as "complaints" as per the proposed requirements, then this will discriminate against providers who will be held to a much more onerous standard of customer care than other payment providers.
- potentially proportionate - as long as the process of "starting the clock" on a complaint is clarified and takes into account our complex value chain and the process of "passing over" of complaints to the correct recipient of such complaints that is accepted practice.
- partly transparent - more clarification is needed as explained above as to the definition of a complaint and the process of "starting the clock" on the timescales proposed.

513. ***Mobile UK*** said draft Code paragraphs 3.4.4 and 3.4.5 should make clear that other than, where contracted otherwise, the default entity with primary responsibility for customer care is the merchant provider. It noted the term "primary responsibility" is introduced into the text without explanation or definition, and this should be explained. It also noted that draft Code paragraph 3.4.9 requires network operators and intermediary providers to provide clear information to consumers about how to contact the merchant provider. It said this is not a practical requirement to place on a network operator. It agreed that network operators must be able to put consumers in touch with merchant providers when asked, but said that network operators would not always have any way of knowing the details of the service the consumer has been charged for. It also said the PSA should confirm how customer care rules apply to newer app store business models and the company ultimately providing the service to end-customers.

Charities

514. ***Chartered Institute for Fundraising*** agree with the new Standard and believe that it will improve public trust in both the commercial and non-profit sectors. However, it noted returning donations is regulated by the Charity Commission and therefore overlaps with draft Code paragraphs 3.4.12 - 3.4.16 regarding refunds. It said that given supporters are donating relatively low amounts, between £5 - £10, it did not see our requirements clashing with current guidelines; it simply wanted a provision that stated returning donations must be in line with the Charity Commission's processes to avoid confusion.

515. ***Macmillan Cancer Support*** said it was not clear from the consultation document who should have ultimate ownership over complaints management. In addition, it said it is not clear how the Customer care Standard should align itself with pre-existing complaints procedures previously established by PSA registrants. It also said it has concerns about the suggestion in the consultation document which said that the PSA has considered introducing a "no quibbles" refund scheme for consumers through "best practice" standards. It was concerned this appears to be introducing legislation "through the back door". It was also worried that such a proposal would mean that charities would not be compliant with the Charities Act. It therefore requested that the PSA includes a provision in the new Code which says that returning donations must be in line with the Charity Commission's processes to avoid confusion.

516. ***RSPCA*** agreed with our proposal to introduce a new Customer care Standard. It also agreed with our assessment of the proposed new Customer care Standard against the general principles.

517. ***Two charity respondents*** agreed with our proposal for a Customer care Standard and our assessment of the proposed new Customer care Standard against the general principles. One of those respondents agreed the minimum suggested service hours are useful.

Consumers and consumer advocates

518. ***CCP and ACOD*** said that they consider a customer charter, implemented by each communications provider, across the communications industry, would bolster existing standards by clearly setting out the type of service and support consumers should expect from providers at all stages of the customer journey. They believed that a customer charter would help to promote transparency across the sector and build consumer trust. It could also provide an opportunity for providers to become market leaders in customer service.

519. ***PSCG*** argued that much more needs to be done here and that its experience of the customer care offered by many of the smaller merchants was dismal. It argued that companies providing customer care on behalf of merchants should be brought within the scope of the Code and that failing this it must be made clear to merchants that they will be held accountable for any failings of the third party they employ.

520. It also argued that where the existence of a contract is disputed, the merchant should be required to provide any evidence they hold to the consumer at the first time of asking. If they are unable to produce such evidence, the consumer should be refunded in full.

521. It also argued service providers should be required to keep evidence of their complaint handling so that the PSA can satisfy themselves that consumers are being treated fairly and that a failure to provide evidence of consent to charge at the first time of asking should be considered a breach of the Code.

522. It did not agree with our assessment of the Customer care standard against the general principles on the basis these arrangements perpetuate the current arrangements which are demonstrably unfair to consumers.

523. ***Which?*** said it is important that consumers have the right to make a complaint when something goes wrong, and that the process should be clear and easy to follow. It notes that currently consumers often do not know who to contact to make a complaint or seek a refund for phone-paid services. It also noted our observation that consumers have different or higher expectations based on other digital markets, and it supported efforts to make improvements within the phone-paid services sector to align with these expectations. It supported the proposed Customer care Standard and its intentions to provide excellent and timely customer care, including complaints resolution, for consumers. It added that a route to customer care must be provided regardless of external factors. It said it is aware some companies (not in the phone-paid services market) continue to use the pandemic as an excuse for poor customer service after more than a year, which should be considered unacceptable under the PSA's Customer care Standard.

PSA's assessment of inputs received

524. The majority of respondents agreed with our proposal to introduce a new Customer care Standard. We welcome this support. We also received a number of detailed comments, as set out below.

Use of the term "excellence"

525. One respondent had specific feedback on the use of the term "excellent" within the Standard and how excellence can be defined. We remain of the view that the term excellence is generally well understood and necessary in the context of both our expectations of providers but also in terms of the quality of service which consumers have a right to expect when interacting with their providers. We have sought to provide clarity on these expectations through the Requirements. We also plan to provide additional guidance in this area (on which we will consult) in order to give providers greater certainty as to what is expected.

Complaints definition

526. We note a number of respondents requested additional clarity on our proposed definition of

complaints, as did some of the attendees at our industry webinars. In responding to these comments, we would note that in drafting the new definition of a complaint for the purpose of Code 15, we have sought to align our definition as closely as possible with Ofcom's definition. We think this would achieve consistency between Ofcom and the PSA in terms of defining complaints. This, we would argue, should drive efficiencies for regulated companies, both in terms of internal operating procedures but also staff training, for example.

527. A number of respondents also sought clarity on the position of complaints made over social media in terms of the proposed definition of complaints. To be clear, there is no requirement under the proposed definition of a "complaint" in the draft Code either to monitor social media activity or to treat any expression of dissatisfaction expressed through social media as a complaint. The draft Code paragraph D.2.17 is clear that a response or resolution must be explicitly or implicitly expected, which means that such expressions will need to be sent to the relevant provider or put in a place that the provider will normally receive or see them and through which responses are normally provided and can be expected. However, we would encourage providers to monitor, as far as they are able to, complaints made over social media platforms as a matter of best practice, but this is not a requirement under the draft Code.

Roles and responsibilities of regulated parties

528. We also note that a number of respondents sought additional clarity with regards to the specific roles and responsibilities of regulated parties within the phone-paid services value chain. This was specifically in relation to draft Code paragraphs 3.4.1, 3.4.4 and 3.4.5. We agree that additional clarity may be helpful and we have therefore amended the wording of draft Code paragraph 3.4.1 to make clear that these Requirements largely fall on intermediary providers and merchant providers. We have also sought to provide additional clarity as to what is meant by the term "primary responsibility" and that, other than where contracted otherwise, the default entity with primary responsibility for customer care is the merchant provider. We have also applied these changes to draft Code paragraphs 3.4.4 and 3.4.5.

Use of "basic rate" numbers or customer care purposes

529. In terms of feedback received on Code paragraph 3.4.1 and the use of geographic numbers for customer care purposes, it is important to note that we do not intend to prevent providers from using geographic numbers for customer care where a contact number is used. This is covered by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 which states that contact numbers for post-sale/post contractual enquiries should be free or cost no more than basic rate[5]. We want to ensure that we are aligned with this and we have, therefore, clarified this position at draft Code paragraph 3.4.1.

Customer care facilities

530. We have also carefully considered what we mean by "customer care" facilities and, in particular, whether this means that all merchants are required to have a customer care phoneline. We can confirm that we are not mandating phonelines for the purpose of customer care facilities under draft Code paragraph 3.4.2. Customer care facilities simply means the method of contact in which customer care is provided for example this can be via a helpline phone number, email, webform or webchat.

Timings related to resolution

531. We have also carefully considered comments relating to the point at which resolution timing begins. We can confirm that our expectation is that this would be from the point at which first contact is made to the provider with primary responsibility for customer care (which in most cases, as we explain above, would be the merchant provider). This applies even where the consumer may contact their network provider in the first instance. The Code is very clear in this regard in terms of the responsibilities of the network – which are to correctly signpost the consumer to the relevant merchant provider.

FutureSight research

532. One respondent questioned how the Customer care Standard and Requirements can be based on FutureSight's research on seeking refunds in the phone-paid services market as this research is not

5 Basic rate means a number that costs no more than a UK geographic number.

objective. We do not agree. This comment misunderstands and misrepresents the policy-making process – independent commissioned research is just one input (albeit critical) in developing policy and regulatory proposals. Moreover, we don't agree with the characterisation that the research is not objective. In our view, it provides valuable insights into consumer attitudes and experiences of refunds for phone-paid services conducted using a mixture of quantitative and qualitative research methods. Also, and as detailed in the consultation document, we took into account the stakeholder responses to our refunds guidance consultation and aimm's customer care best practice guide.

App stores

533. In relation to the questions about how Customer care Requirements will apply to app stores, it is important to note that we intend to treat app stores and developers in the same way we do under Code 14. This includes retaining an exemption, as we do currently, and that app stores themselves will continue to take primary responsibility for customer care, again, as they do now. The Code will continue to apply to all providers as currently with the very clear objective that our regulation does not get in the way of services that consumers want and enjoy. We are not seeking to radically change the way that we deal with app developers and app stores under Code 15 as we continue to believe it is important to enable appropriate flexibility within the Code, so that it recognises and allows for differences between the app store model and traditional PRS models.

534. On the question of how we see this working in practice, as we set out in our consultation document, following on from publication of our Code 15 statement, we intend to publish a notice which will set out the existing permissions under Code 14 that will continue to apply under Code 15. We also intend to set out a list of exemptions published under the current registration provisions of Code 14 that will also continue to apply under Code 15 for the purposes of the Organisation and service information Standard and Requirements.

Involvement of third parties

535. We have also carefully considered comments relating to third parties handling customer care on behalf of merchants. We can confirm that if a merchant chooses to contract a third party outside of the PRS value chain to handle customer care, the merchant will remain responsible for customer care under the Code. Third parties who do not form part of the PRS value chain are not within the PSA's remit and, therefore, cannot be held accountable by PSA for non-compliance. In these circumstances, merchant providers should ensure the party handling customer care are doing so in accordance with the Customer care Standard and Requirements.

536. In terms of draft Code paragraph 3.4.9(a) and the proposed Requirement for network operators and intermediary providers to give details of the service the consumer has been charged for, we agree with some of the practical concerns raised. In particular, we accept this may not be a practical requirement, and that they may not always be able to identify details of this service. Accordingly, we are including a reasonableness test relating to this Requirement, as follows: "where such details can be reasonably obtained".

Charity donation refunds

537. We have also taken account of concerns raised by charity respondents about providing refunds for donations and how they need to be provided in line with the Charity Commission requirements. We can confirm that charities would not be expected by the PSA to provide refunds in a way that contravenes other regulatory requirements or legislation. We would only expect refunds to be provided where a genuine issue has occurred or at the charities' discretion where no issues have occurred. We considered the concept of "no-quibble" refunds during the development stages of the draft Code, however, we decided that such a requirement would not be proportionate. On balance, we consider this may be more appropriate for best practice information (noting that best practice information does not introduce rules or legislation, but rather, as clarified in paragraph 163 is about going beyond compliance with the Code and raising market standards in areas the Code does not cover) which is something we can engage with industry stakeholders on.

Consumers not expending undue time, effort or money

538. Some respondents commented that it is not clear in terms of draft Code paragraph 3.4.16 what is meant by consumers not expending undue time, effort or money in pursuing a complaint and/or seeking a refund. Some examples would be not having to make multiple contacts which may take

time, being asked to provide information over and above what is necessary to resolve a complaint and expecting a consumer to pay any fees to receive a refund. This will be covered further in Customer care guidance.

Final decisions

539. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 3.4 which sets out our proposed Customer care Standard, with the following amendments:

- in draft Code paragraph 3.4.1:
  - we have sought to clarify that our expectation is that it will typically either be the intermediary provider or merchant provider who will have primary responsibility for Customer care Requirements
  - we have included the following wording "where an intermediary provider or merchant provider does not have primary responsibility it must promptly refer complaints it receives to the PRS provider that has primary responsibility"
  - we have also sought to clarify that, for the purposes of this paragraph, and draft Code paragraphs 3.4.4 and 3.4.5, where there are no arrangements between PRS providers in the value chain as to who has primary responsibility, such responsibility will fall on the merchant provider
  - we have also amended this Requirement to clarify that basic rate (costing no more than UK geographic numbers) phone numbers can be used for customer care – this is aligned with the Consumer Contract Regulations 2013.
- we have replaced the term "contractual" with "primary" at draft Code paragraph 3.4.4 in order to ensure consistency between terms used at draft Code paragraph 3.4.4 and 3.4.5
- we are adding the following wording "where such details can be reasonably obtained" to the Requirement relating to network operators and intermediary providers to provide clear information about the merchant providers' name as registered with the PSA and details of the service (draft Code paragraph 3.4.9(a)).

Assessment framework

540. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Customer care Standard and Requirements against the general principles which we set out in the discussion document. A number of these we have addressed in responding to various responses to questions 19 and 20 above.

541. Having done so, we consider that our new Customer care Standard and Requirements meets these tests, as we set out below:

- **effective** as they are designed to address deficiencies identified by the PSA in operating Code 14, and to take account of additional intelligence and insights obtained through other sources, in the most proportionate way. This includes consumer complaints, consumer research and our recent refunds consultation. These have given us a clear understanding of what consumers expect when they contact providers to complain. As such, we believe the new Standard and Requirements will deliver consumer benefits regarding customer care and, therefore, result in increased trust of phone-paid services. They will also benefit vulnerable consumers which, in turn, will benefit industry as non-compliance and the unfair treatment of vulnerable consumers should be reduced thus improving industry's reputation.

  We also consider that it will better meet consumer expectations formed by their customer care experiences in other markets. As a result of the proposed changes, we consider that consumers should know who to contact. This should reduce the time and effort spent by consumers identifying the correct contact point as well as reduce the number of calls that are fielded by network operators and other parties (including the PSA). This will lead to improved consumer experience overall and, therefore, increased consumer trust and confidence in the sector.

- **balanced** as they represent a fair balance between the requirements of fairness, effectiveness

and efficiency, and address relevant regulatory needs. In particular:

- by clearly defining the procedural requirements which relevant providers must comply with, they fulfil our objectives of making providers' complaints handling procedures more transparent and accessible, improving the effective and timely resolution of complaints by providers and ensuring that the process of providing refunds to consumers is quick and easy.
- they provide for a more simplified Code as it seeks to consolidate different provisions related to complaints handling, which are currently spread between Code 14 and our published guidance, into the Code. It will be clearer to providers what they are expected to do and, therefore, this should aid compliance with the Code.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

  In addition, all providers in the value chain will continue to have roles and responsibilities related to customer care in accordance with prescribed minimum Standards. Where the Code differentiates in terms of requirements on providers, this is based on a clear understanding of those roles and responsibilities in terms of where different providers sit within the value chain, and a clear understanding as to why it is necessary and appropriate to target particular requirements to particular groups of providers. Our view, therefore, is that these changes are fair and do not unduly discriminate in relation to certain providers.

- **proportionate** as they are important requirements and are the minimum which we consider necessary to ensure consumers have a positive experience, including high levels of customer care, in their dealings with providers of phone-paid services. They have been designed to address identified deficiencies in the scope and clarity of the current rules in the most proportionate way, including on accessibility, transparency, effectiveness and timeliness. Ensuring consumers have a positive experience when engaging with their provider, including prompt and effective resolution of complaints and a positive experience of seeking and obtaining a refund, is critical for efficient, well-functioning markets that want to deliver good outcomes for consumers. This is vital to the overall reputation of markets as it drives consumer confidence and trust in markets which helps the phone-paid services market by supporting growth. Our view, therefore, is that these changes are proportionate measures and are designed to address relevant regulatory needs. Most of the changes should positively impact on the regulatory burden across the industry, insofar as we consider that they will benefit industry by ensuring clarity and consistency improving consumer outcomes.

- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above. Additionally, the effects of the changes are clear on the face of the new Standard. We, therefore, consider that the Code and this accompanying statement clearly set out to industry the Requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Vulnerable consumers Standard

Standard

Services must be promoted and provided in a way that ensures they are not likely to cause harm or detriment to consumers who are or may be vulnerable as a result of their particular circumstances, characteristics or needs.

Rationale

This Standard aims to ensure that measures are adopted for consumers who, due to their particular circumstances, characteristics, or needs, are or may be vulnerable[6], to ensure that they are protected from harm

6 We define a vulnerable consumer as "a consumer who is less likely to be able to make fully informed or rational decisions due to a specific characteristic circumstance or need and may be likely to suffer detriment as a result". This definition is deliberately broad and recognises that all consumers could potentially be vulnerable. This approach is consistent with the approach increasingly used by other regulators to define vulnerability.

as far as is reasonably possible, and do not suffer detriment as a result. It is important that providers consider the particular needs of vulnerable consumers, in service provision and promotion, as well as customer care (including complaints handling).

Background

542. Under Code 14, we include a rule relating to vulnerability under paragraph 2.3.10. This states:

> "PRS must not be used or provided in such a way that it results in an unfair advantage being taken of any vulnerable group or any vulnerability caused to consumers by their personal circumstances where the risk of such a result could have been identified with reasonable foresight."

543. We have also published accompanying guidance on the issue of vulnerability to support firms. This guidance points out that the key aspects of this approach are to identity the risks of potential harm, monitor those risks and, once an issue has been identified, take adequate steps to address it.

544. Code 14 also states in relation to children[7] that:

- "PRS must not directly appeal to children to purchase products or take advantage of children's potential credulity, lack of experience or sense of loyalty." (2.3.9)
- "PRS aimed at or likely to be particularly attractive to children must not contain anything which a reasonable parent would not wish their child to see or hear in this way." (2.5.8)

545. We have also published accompanying guidance on children's services which clarifies what providers who offer services that are aimed at, or are likely to appeal to, children should do, especially in relation to the promotion material and content of those services.

546. Also, to inform our own approach to consumer vulnerability, in relation to the development of Code 15 as well as changes to our strategic purpose and regulatory framework, we commissioned a review on consumer vulnerability. The aim of this review was to assess best practice across some of the UK's key regulators in relation to vulnerability, and to see how our approach compares, to ensure we are working in the best interests of consumers. The review highlighted a number of features of the phone-paid services market which affect consumer vulnerability, which we detailed in our consultation document.

Consultation proposals

547. We proposed to introduce a new Vulnerable consumers Standard. This proposed new Standard included the existing rules on appropriate age verification (from both Code 14 and special conditions) and children's services (from Code 14). We also proposed to include the following new Requirements under this Standard:

- the need to have a nominated person (or persons) within organisations that has overall responsibility for ensuring that the organisation and the service it promotes and provides takes account of vulnerable consumers (draft Code paragraph 3.5.1)
- the need to have policies and procedures in place for vulnerable consumers and to provide these to the PSA on request (draft Code paragraph 3.5.2)
- the need for relevant providers to ensure that their customer care and complaint handling policies and procedures are robust and take account of the needs of all consumers, including those who are or may be vulnerable (draft Code paragraph 3.5.3).

548. We asked the following questions:

Q21: Do you agree with our proposal to introduce a new Vulnerable consumers Standard? Please provide an explanation as to why you agree or disagree.

Q22: Do you agree with our assessment of the proposed new Vulnerable consumers Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

7 In both Code 14 and draft Code 15 a child is defined as people under the age of 16.

Stakeholder comments

Network operators

549. ***BT*** agreed that the promotion and provision of PRS services must not cause harm to vulnerable consumers. It stated that along with customer fairness, doing the right thing for vulnerable consumers is embedded in their culture, policies and processes. In addition to existing Code compliance, it stated it has a vulnerability policy reflecting requirements in line with Ofcom General Conditions C5 1 - 5.5 and an ongoing program of work to continually improve in this area.

550. ***BT*** agreed with the new Requirements which build on existing Code rules on vulnerability and special conditions linked to age verification for particular services and children's services.

551. ***BT*** also generally agreed with the PSA's assessment of the Vulnerable consumers Standard against its general principles.

552. ***Telecom2*** agreed in principle to a Vulnerable consumers Standard but said it has to be realistic about industry's ability to identify such consumers, particularly prior to seeing a complaint or other communication. In terms of Q22, it said in general it agrees but it would not be proportionate if the need to document procedures and complaints was set too high by the PSA.

553. ***VMO2*** agreed with the proposal to introduce a new Vulnerable consumers Standard. It also agreed with our assessment of the new Standard against the general principles but said that it would like the PSA to reasonably consider the practicalities of identifying vulnerable customers.

Level 1 providers

554. ***Donr Ltd*** agreed with our proposal to introduce a new Vulnerable consumers Standard. It did note, however, on a point of detail, for charity donations and lotteries, MNOs are best placed to provide a universal approach to vulnerable people by placing a bar on their phone account. It therefore argued that the PSA should consider if it is effective to direct this standard to intermediary and merchant providers or contain it to MNOs, who it felt are able to provide a consistent experience across all charities by placing a bar at the phone-account level. With regards to draft Code paragraph 3.5.8, society lotteries and raffles can be used by people above 16 while still covered by the Gambling Act 2005. It also noted that draft Code paragraph 3.5.9(a) references 18+, which should be amended to reflect the Gambling Acts requirements (16+). It also said, for the avoidance of doubt, draft Code paragraph 3.5.11 meets the requirements to self-verify and refund in the event of non-compliance under the Gambling Act and Licence Conditions and Codes of Practice. It also agreed with our assessment of the proposed new Vulnerable consumers Standard against the general principles.

555. ***Fonix*** agreed with our proposal to introduce a new Vulnerable consumers Standard. It noted that the identification of vulnerable consumers is usually only possible after the point of interaction with a service. It also argued that any standards should include guidance on settling disputes with users identified as vulnerable. It also agreed with our assessment of the proposed new Vulnerable consumers Standard against the general principles.

556. ***Infomedia*** noted that it is challenging to identify vulnerable customers as an aggregator or merchant. This is because the information they have about any individual customer is limited at the point of sale. It therefore welcomed a more robust approach taken in respect of MNOs sharing with the value chain flags for users they already are aware may be vulnerable or otherwise not be able to give properly informed consent.

557. ***Mobile Commerce & Other Media Ltd*** did not agree with our proposal to introduce a new Vulnerable consumers Standard. It said this point relates to law that all firms have to comply with anyway. It said the PSA have already stated that they do not intend to include elements of regulation in the Code where service types are required to comply with these elements under other regulation e.g. the Gambling Commission, but this is exactly what it appears to be doing here. Also, it said there is no definition of a vulnerable person. This can be a very fluid term as people's vulnerability can vary from situation to situation and from time to time.

558. ***One industry respondent*** agreed save that it was concerned that there is an expectation to identify vulnerable consumers as individuals in advance of interaction. It said if this is not the case and this is a requirement to guard against vulnerable individuals being impacted generally with appropriate safeguards and reasonable monitoring for evidence that may indicate an individual end user is

vulnerable, then clarity should be given. It had no comments in relation to Q22 provided there is not an expectation to identify vulnerable consumers individually in advance.

Broadcasters

559. ***Global*** agreed, in principle, with our proposal to introduce a new Vulnerable consumers Standard. It agreed that it is important to protect vulnerable customers, however it believed there is far too much "greyness" in the proposed code around what constitutes a "vulnerable person", how they are identified and how measures are put in place in an industry where mostly the only information it receives on customers is an 11-digit mobile number. It said it would like to see a lot more clarity around what the PSA proposes on this and any potential guidance/best practice in advance of final publication of the Code.

Trade associations

560. ***FCS*** agreed with our assessment of the proposed new Vulnerable consumer Standard against the general principles.

561. ***aimm*** agreed it is important to ensure that the needs of vulnerable consumers are considered when providing phone-paid services. It did, however, seek clarity on whether industry is being asked to identify vulnerable consumers in advance of them interacting with a service – which seems a difficult task. It said if this is the case, then there must be a balance struck between identifying and prohibiting vulnerable users and allowing vulnerable consumers fair use of services which they wish to access. It also noted one of its broadcaster members suggested that it might be useful if the PSA were to provide a risk grid to provide clarity in this area, as Ofcom has recently done within recent updates to the Broadcasting Code. It also asked for clarity on requesting evidence to prove that someone is vulnerable if there is nothing to suggest that it is the case. It also sought clarity on this, as services "aimed at", and services "likely to appeal to" children are both subjective and two very different things. It noted the phrase "likely to appeal" is one that causes concern and it would like to see this definition narrowed, perhaps to something like "services delivered within or actively targeted to accompany children's content".

562. It generally agreed with the assessment of the proposed Vulnerable consumers Standard against the general principles. However, it noted that that there will be an increased burden on providers to compile the documentation that may be required by the PSA to evidence what is already in place in many instances.

Charities

563. ***Chartered Institute for Fundraising*** noted that protecting vulnerable supporters is very important to the charity sector. It said the Code of Fundraising Practice includes specific guidance on treating donors in vulnerable circumstances fairly and the Charities Act 2016 includes legal requirements to protect people in vulnerable circumstances, such as including statements in their annual report on how a charity has protected donors in vulnerable circumstances. It did not think our proposals contradicted any of these regulations but asked that we recognise them and make provisions to support charities in the event of regulation changing.

564. ***Macmillan Cancer*** agreed in principle with our proposal to introduce a new Vulnerable consumers Standard. It said it recognised the importance of ensuring that people in vulnerable circumstances are appropriately safeguarded. It noted that the Charities (Protection and Social Investment) Act 2016 already requires charities to outline the steps they are taking to protect vulnerable people in annual reports. It said that at the moment it did not consider that our proposals contradicted any of the vulnerable people safeguards the charity sector already has in place.

565. ***RSPCA*** agreed with our proposal to introduce a new Vulnerable consumers Standard. It also agreed with our assessment of the Vulnerable consumers Standard against the general principles.

566. ***Two charity respondents*** agreed a Vulnerable consumers Standard is a good thing for consumers. They also agreed with our assessment of the Vulnerable consumers Standard against the general principles.

Consumers and consumer advocates

567. ***CCP and ACOD*** welcomed the introduction of a Vulnerable consumers Standard.

568. ***PSCG*** agreed with our proposal to introduce a new Vulnerable consumers Standard. It argued that merchants need to be more aware of the increased risk of consumer harm when they engage in lawful "sharp practice". It agreed with our assessment of the Vulnerable consumers Standard against the general principles.

569. ***Which?*** supported the efforts to ensure that measures as adopted for consumers who may be vulnerable to protect them from harm. It agreed that the relevant rules from Code 14 and the guidance on vulnerability should be carried over to the new Code, including the approach of identifying risks of potential harm, monitoring those risks and taking adequate steps to address it when an issue arises. It acknowledged the PSA's review on consumer vulnerability and the finding that it's difficult to quantify the level of detriment vulnerable consumers might experience in the phone-paid services market. However, it said the review also noted that the instantaneous nature of phone payments, among other aspects, could present a greater risk for vulnerable consumers, which it agrees with. It said it would be prudent to consider vulnerable consumers in reporting mechanisms. It argued this may allow the PSA and market providers to determine more clearly what the risk and potential harms are for vulnerable consumers, such as whether they are more likely to subscribe to competitions, or whether they have more difficulty using services and seeking assistance for any problems due to the small screens, or any other issues that may disproportionately affect vulnerable consumers.

PSA's assessment of inputs received

570. Respondents were broadly very supportive of our proposals to introduce a new Vulnerable consumer Standard.

571. We note the comments around the lack of specificity around a definition of vulnerability. We do not accept these comments as a definition, carried over from Code 14, is included in draft Code paragraph D.2.79. This definition is intentionally broadly drafted to recognise that all consumers may potentially be vulnerable according to circumstances and at different times. This is generally consistent with the approaches adopted by other regulators, including Ofcom and FCA.

572. We also acknowledge comments about the difficulty of identifying vulnerable consumers in the phone-paid service market. To be clear, it is not our intention to, nor do the Requirements as currently worded, require providers always to be able to identify vulnerable consumers. We accept that, in many instances, it is simply not practical to do so. While we agree that network operators are more likely to know if their customers are vulnerable, we accept it may not be appropriate, or indeed lawful, for them to share this information with other parties in the value chain. That said, we do expect providers to take reasonable steps, including monitoring and collecting data where it is feasible to do so. We will be providing additional clarification in our guidance consultation as to our expectations on reasonable steps which providers are able to take in identifying vulnerable consumers. This is likely to include, for example, our expectations relating to consideration of different service types and how they may be more likely to attract, or appeal to, vulnerable consumers.

573. We have also considered comments that an appropriate approach to protecting vulnerable consumers is to require network operators to place a PRS bar on the phones of vulnerable consumers. While we agree this could provide an important consumer protection safeguard, it is not in our view something that, by itself, can be relied on. In particular, we recognise there are difficulties in identifying vulnerable consumers and the fluid nature of vulnerability. In any case, it is important to note we do not have the powers to require network operators to offer or put premium rate service bars in place. This falls within Ofcom's responsibilities.

574. We note the comments made in relation to the fact that currently under the Gambling Act society lotteries and raffles can be used by people above age 16. We are also aware that this age limit is currently being reviewed, with a suggestion that the limit should be raised to 18. The Government consultation makes clear that very few 16-17 year-olds currently use society lotteries and the provisions at draft Code paragraph 3.5.9 apply to remote gambling services, where the age limit under the Gambling Act 2005 is 18.

575. We note comments from aimm that the phrase "likely to appeal" (draft Code paragraph 3.5.5) should be narrowed to "services delivered within or actively targeted to accompany children's content". We do not agree that narrowing the definition in this way is sufficient in terms of preventing potential harm and we remain of the view that "likely to appeal" to children remains both appropriate and clear.

Final decision

576. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 3.5 which sets out our proposed Vulnerable consumers Standard and Requirements.

Assessment framework

577. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Vulnerable consumers Standard and Requirements against the general principles which we set out in the discussion document. A number of these we have addressed in our assessment of responses to questions 21 and 22 above.

578. Having done so, we consider that our new Vulnerable consumers Standard and Requirements meets these tests, as we set out below:

- **effective** as they are designed to improve the performance of the industry in relation to vulnerable consumers by ensuring that providers take the necessary steps to protect vulnerable consumers, with an emphasis on preventing harm before it occurs. In addition, having to nominate individuals to have overall responsibility within an organisation will ensure greater accountability within firms. We also consider that Requirements to provide information to the PSA will support our proposed compliance monitoring activities as well as help us identify and share best practice as a way of driving up standards across the industry. Bringing all the Requirements relating to vulnerability into one place will have the following benefits:
    - greater simplification, making it easier for consumers to understand what they can expect from the industry
    - improved clarity for providers in terms of compliance with these Requirements
    - more consistency with the approach taken by other regulators.
- **balanced** as requiring relevant providers to take account of the needs of consumers who are or may be vulnerable will reduce the risk of potential harm and ensure fair treatment of vulnerable consumers. This will benefit all providers of phone-paid services by enhancing the reputation of the industry as a whole. Our assessment is that this new Standard, by bringing all the Requirements in relation to vulnerability into one place within the Code, is an improvement on the existing Code and will provide greater clarity for providers.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular description of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as they should not disproportionately increase the burden on industry. We would expect providers to already take their obligations towards vulnerable consumers seriously and so our view is that this new Standard and Requirements should not unnecessarily increase the regulatory burden as many firms will already have policies and procedures relating to vulnerable consumers.
- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above. In addition, the effects of the changes are clear on the face of the new Standard. We therefore consider that the Code and this accompanying statement clearly set out to industry the requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Consumer privacy Standard

Standard

Consumer privacy must be respected and protected.

Rationale

This Standard aims to ensure that consumers are able to trust that their privacy is respected, and their data used lawfully and responsibly. It is essential that consumers have confidence that phone-paid services providers will respect their privacy in the way in which consumer data is collected and used.

Background

579. Code 14 has the following privacy Outcome at paragraph 2.4:

> "That PRS do not cause the unreasonable invasion of consumers' privacy."

580. A number of rules support this privacy Outcome, including paragraph 2.4.1 which states:

> "Level 2 providers must ensure that PRS do not cause the unreasonable invasion of consumers' privacy."

Consultation proposals

581. We proposed to introduce a new Consumer privacy Standard. In terms of the detailed Requirements, we did not propose to introduce any additional Requirements over and above the existing rules which are defined under Code 14. However, we proposed to amend the Requirements to:

- reflect the need for providers to comply with applicable privacy and data protection laws (Code paragraph 3.6.1)
- clarify our expectations in relation to the lawful basis and exemptions that for the purposes of PRS can be used by providers (as appropriate) when collecting or sharing consumers' personal data (Code paragraph 3.6.2)
- ensure consumers are provided with greater transparency as to the purpose for which their information is to be used, and that a positive acknowledgement and consent is received before such information is collected (Code paragraph 3.6.4).

582. We asked the following questions:

Q23: Do you agree with our proposal to introduce a new consumer privacy Standard? Please provide an explanation as to why you agree or disagree.

Q24: Do you agree with our assessment of the proposed new consumer privacy Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

583. ***BT*** agreed the consumer privacy must be protected and should comply with all applicable privacy and data protection laws, noting that PSA are not proposing to introduce any additional consumer privacy rules beyond those currently existing under Code 14.

584. ***BT*** generally agree with the PSA's assessment of the Consumer privacy Standard against its general principles.

585. ***Telecom2*** said there are already regulations and legislation around privacy that industry has to follow. It said it wouldn't want the PSA to encourage or even compel providers to breach such regulation and legislation, even where it has the right to do so. It also noted some of the proposed Standard and Requirements duplicates the GDPR/DPA, and it saw no value in this and if the two become out of step providers will have to make a choice as to who they may be fined by. In terms of Q24, it said the assessment takes no account of the conflict between UK data protection legislation and the requirements of the draft Code. As such, it felt that none of the criteria in the assessment are met.

586. ***VMO2*** agreed with our proposal to introduce a new consumer privacy Standard and agreed with our assessment of the proposed new Consumer privacy Standard against the general principles.

Level 1 providers

587. ***Donr Ltd*** said that draft Code paragraph 3.6.2 appears to overlap with the Information Commissioner's Office (ICO) remit and would be difficult to take through a tribunal process if the ICO (or similar) has not proved a service broke the law first. If this had been proven, then separate PSA sanctions seems highly improbable. It recognised the PSA is unlikely to drop this Standard, and suggested guidance is used to clearly state what is considered in scope.

588. In terms of Q24, it noted that ICO are better equipped to govern data protection laws, and therefore suggested this clause fails the effective, balanced and proportionate assessments, as the PSA does not have an appropriate legal remit to adjudicate on data protection issues under the Communications Act 2003.

589. ***Fonix*** did not agree with our proposal to introduce a new consumer privacy Standard. It argued privacy standards are already covered extensively under GDPR requirements and it did not seem reasonable to also include this within the PSA code.

590. ***Infomedia*** said the purpose of this Standard is unclear and not well explained. It noted that services provided to consumers in the UK are covered by the Data Protection Act (and, to a greater or lesser extent as Brexit continues, the GDPR) with well-established and well understood rules and requirements set out by the ICO. It suggested that a general statement that providers must comply with applicable data protection law could easily sit beneath the Transparency Standard, reducing the overall weight of regulation, while still being enforceable by the PSA in the event it wishes to take action against a provider who has breached data protection law.

591. ***Mobile Commerce & Other Media Ltd*** said the Standard itself appears to be a statement rather than a standard. It said the PSA seems to have expanded a point which is law and, therefore, made the code unduly lengthy with requirements that are not needed. It noted that draft Code paragraph 3.6.2 requires that the merchant keeps evidence of consent to contact the consumer and there is no timescale to this requirement.

592. ***One industry respondent*** agreed that consumer privacy is essential. It noted there is a lot of national law, such as UK GDPR covering this. It was, therefore, concerned that Code 15 risks putting it in breach of national law. It said that as an example, a fundamental principle of UK GDPR is data minimisation. The proposed Requirement under Code 15 of providers retaining all "potentially relevant" information pertaining to an investigation is so broad as to go against data minimisation principles. It said its position relating to Q24 is dependent on the resolution of its queries under Q23. It said that without that certainty, it cannot agree with the assessment as it risks breach of law and other regulatory obligations.

Broadcasters

593. ***Global*** said it would like to see more information, especially with regards to PSA requests for information. This included understanding whether it was necessary to get merchants to get specific confirmation from their customers to share their details with the PSA and whether the fact that merchants may need to share details with the PSA needs to be included in all merchant privacy policies. It also noted there was a lot of repetition in draft Code paragraph 3.6.2 around general GDPR and data protection laws. It said that, ultimately, when it comes to customer data, merchants answer to the ICO and not the PSA and this should be clear as some of this guidance seems potentially contradictory, particularly around the length of time merchants may be required to retain customer data in order to comply with a potential investigation.

Trade associations

594. ***aimm*** agreed that consumers have the right to privacy and that this is of the upmost importance. It questioned draft Code paragraph 3.6.1 and whether this is likely to encourage industry to break GDPR laws. It said that retaining all information that is potentially relevant is too broad an obligation that could be limitless in its requirements and as such means information may be required to be stored that would be in conflict with other data protection laws. It noted that to be in line with the PSA's overarching aim to simplify regulation, this Standard could have comprised just draft Code paragraph 3.6.1 and avoided the confusion of attempting to duplicate regulation in this area. It also sought clarity on draft Code paragraph 3.6.2 and the process for a consumer who withdraws their consent to be contacted in terms of contacting them with service message information or in case of refunds being required. It said members already have clear guidance on this from ICO and that the PSA does not need to codify that regulation as it is already covered in existing regulation.

595. ***aimm*** made the following comments relating to with our assessment of the Consumer privacy Standard against the general principles:

- potentially not effective - there is confusion regarding the levels of data protection that consumers are legally obliged to receive due to the differing of the process proposed at paragraph 501 of the consultation document.
- potentially unbalanced - while it is understood that consumer privacy is important and should be respected, it expressed concerns that this Code encourages industry to break other data protection laws.
- potentially unfair – it was concerned that the Code will encourage providers to break GDPR rules by asking providers to retain all information that is "potentially relevant to an investigation", being that this is an unknown entity and may result in more data being stored than is lawful.
- potentially disproportionate - in some areas this appears to misalign the Code with the current privacy laws as stated above.
- potentially not transparent – it said there is confusion about whether the Code will be encouraging industry to break other data protection laws.

Charities

596. ***Macmillan Cancer Support*** felt that introducing a new Consumer privacy Standard may be unnecessary due to the GDPR which providers are already expected to comply with. It said it would also be helpful to understand who would be the lead regulator if a breach of the Consumer privacy Standard was identified – the ICO or the PSA?

597. ***RSPCA*** agreed with our proposal to introduce a new Consumer privacy Standard. It also agreed with our assessment of the proposed new Consumer privacy Standard against the general principles.

598. ***Two charity respondents*** agreed with our proposal to introduce a new Consumer privacy Standard. One of those respondents welcomed greater transparency as to the purpose for which the information is to be used and said that positive acknowledgement of this is a good thing. The other respondent also agreed in principle with our assessment of the proposed new Consumer privacy Standard against the general principles.

Consumer and consumer advocates

599. ***PSCG*** noted it was aware of recent cases where numbers have been transferred from a marketing database and then used to send PRS texts resulting in unlawful charges to the consumers owning these numbers. It argued that such issues might be more properly considered by ICO and that it might be better for the PSA to leave these issues to ICO.

600. It said it had no issues with our assessment of the proposed new Consumer privacy Standard against the general principles but would expect the PSA to liaise with ICO regarding implementation and enforcement so as not to duplicate effort.

601. ***Which?*** supported the proposed Standard that consumer privacy must be respected and protected by providers. In particular, it supported the Requirement under the Standard to ensure there is transparency around the purpose for which providers are collecting and using consumers' information. It also supported the Requirement that a positive acknowledgement of this purpose and consent are given by the customer before any collection of information is important to assure consumers that providers are meeting their GDPR obligations, and it should also help build greater confidence and trust in the services. It also said providers should be required to be transparent about any third-party data sharing.

PSA's assessment of inputs received

602. We received a mixed response relating to our proposed Consumer privacy Standard. While a number of respondents were supportive of this Standard, other respondents were concerned that this is too broad an obligation and may conflict with other data protection laws, including the UK GDPR and the DPA 2018. We do not agree with majority of these concerns. In particular, it is important to note there are key differences between our provisions and the law, in that our main provisions have been

more narrowly drafted for the purposes of PRS regulation and therefore would be for the PSA to enforce rather than the ICO. For example, in draft Code paragraph 3.6.3, we limit our Requirements on processing to use of consent, legal obligation or legal proceedings notwithstanding that the GDPR and DPA 2018 has other lawful bases/exemptions for processing. A breach of this paragraph would be, for example, the fact that another basis other than those listed was used to collect personal data for PRS related purposes. Also, draft Code paragraph 3.6.2 requires evidence being available for the PSA which the law does not of course require. However, in relation to draft Code paragraph 3.6.4 while we are clear that this provision does go slightly further than the law in that it places the obligation on the merchant provider (rather than being limited to just the data controller under the law) and requires a consumer to positively acknowledge their understanding (rather than just their consent) as to the provider's use of their data, we accept that in practice it is unlikely to achieve a significant benefit in terms of protection for the consumer over and above the relevant provisions of the UK GDPR and DPA 2018. We have therefore decided to remove paragraph 3.6.4 from the draft Code. We have however decided to add the words 'as defined by law' into draft Code paragraph 3.6.3 to provide further clarity in terms of the meaning of consent which is required for collecting or disclosing consumers' personal data.

603. We also do not agree that our proposed Consumer privacy Standard goes against UK GDPR data minimisation principles. In particular, we consider that the Requirement under draft Code paragraph 3.6.2 for evidence establishing consent to be provided to PSA on request is entirely consistent with the ICO's guidance on consent, which makes clear that such evidence should be kept. It should also be noted that the Consumer privacy Standard and Requirements are not focused on data retention; this is covered under our Data retention Requirements at draft Code paragraphs 6.2.25 and 6.2.26. With regards to the comment relating to withdrawal of a consumer's consent and subsequent need to contact the consumer for refunds or service message, draft Code paragraph 3.6.2 does state that it applies "unless otherwise permitted by law". As such we consider that where a legal obligation, such as a PSA direction under the Code, to issue refunds or a legitimate interest lawful basis exists this would not be in breach of the paragraph. It would be for the relevant provider to satisfy itself as to, and duly record, the lawful basis it will rely on where consent is withdrawn, seeking appropriate legal advice as required.

604. Finally, in relation to the specific comment about the fact that no timescale has been specified in draft Code paragraph 3.6.2, we will providethis additional clarity in our proposed data retention notice which will be published prior to Code 15 coming into force.

Final decision

605. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 3.6 on our proposed Consumer privacy Standard and Requirements, with a clarificatory amendment to draft Code paragraph 3.6.3, and with the exception of draft Code paragraph 3.6.4 which we have decided to remove given the limited consumer protection benefit it would provide over and above the UK GDPR and DPA 2018.

Assessment framework

606. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Consumer privacy Standard and Requirements against the general principles which we set out in the discussion document.

607. A number of these we have addressed in our assessment of responses to questions 23 and 24 which we have addressed above.

608. Having done so, we consider that our new Consumer privacy Standard and Requirements meets these tests, as we set out below:

- **effective** as they confirm the levels of protection that consumers should receive and which they have come to expect in terms of the use of their data and their provision of consent from their engagement with other markets.
- **balanced** as they require relevant providers to respect and protect consumers' privacy and information. This is vital to the overall reputation of markets as it drives consumer confidence and trust in markets which helps the phone-paid services market by supporting growth.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or

against a particular descriptions of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

- **proportionate** as we are not making significant changes to the existing Requirements of Code 14 but rather simply looking to align more closely with the current privacy laws and clarify our expectations in terms of how PRS consumers' privacy should be protected. Therefore, the changes should not add to the regulatory burden for providers. In our view, these rules remain important and are the minimum which we consider necessary to ensure consumers' privacy is respected and protected.
- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above. The effects of the changes are clear on the face of the new Standard. We therefore consider that the Code and this accompanying statement clearly set out to industry the Requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Prevention of harm and offence Standard

Standard

Promotions and services must be provided in a manner that does not cause harm or unreasonable offence or distress to consumers or to the general public.

Rationale

This Standard aims to ensure that providers act in the consumer interests at all times, and that phone-paid services do not cause harm or unreasonable offence or distress to consumers or the general public.

Background

609. Code 14 contains a number of steps that providers must take to achieve the "Avoidance of harm" Outcome. In particular, Code paragraph 2.5 states the following:

"That PRS do not cause harm or unreasonable offence to consumers or to the general public."

610. There are a number of rules which support this Outcome, including that

- PRS must not promote or incite or be likely to promote or incite hatred in respect of any group or individual (as specified)
- PRS must not encourage or be likely to encourage consumers to put themselves or others at risk
- PRS must not promote or facilitate prostitution
- PRS must not induce and must not be likely to induce an unreasonable sense of fear, anxiety, distress or offence.

Consultation proposals

611. We proposed to introduce a new Prevention of harm and offence Standard.

612. Under this Standard, we did not propose to introduce any additional Requirements over and above the existing rules which are set out under Code 14. This includes Requirements relating to:

- PRS must not promote, incite or be likely to promote PRS must not promote, incite or be likely to promote or incite hatred in respect of any group or individual identified by age, disability, sex, gender identity, race, religion or belief or sexual orientation (draft Code paragraph 3.7.1)
- PRS must not encourage or be likely to encourage consumers to put themselves or others at risk (draft Code paragraph 3.7.2)
- PRS must not induce and or be likely to induce an unreasonable sense of fear, anxiety, distress, or offence (draft Code paragraph 3.7.3).

613. We also proposed to remove a number of rules which we considered were no longer necessary, either because we had largely not used these rules, or the rules were covered more broadly through our new proposed Standards. These included:

- PRS must not promote or facilitate prostitution (Code 14 paragraph 2.5.4)
- Level 2 providers must ensure that their services are not promoted in an inappropriate way (Code 14 paragraph 2.5.6)
- Level 2 providers must use all reasonable endeavours to ensure that promotional material is not targeted at or provided directly to those for whom it, or the service which it promotes, is likely to be regarded as being offensive or harmful (Code 14 paragraph 2.5.7)
- PRS aimed at or likely to be particularly attractive to children must not contain anything which a reasonable parent would not wish their child to see or hear in this way (Code 14 paragraph 2.5.8)
- where PRS involve the possibility that two or more consumers might be able to exchange contact details or make arrangements to meet, then clear advice should be given regarding appropriate safeguards, in line with any generally available police advice (Code 14 paragraph 2.5.9).

614. We asked the following questions:

Q25: Do you agree with our proposal to introduce a new Prevention of harm and offence Standard? Please provide an explanation as to why you agree or disagree.

Q26: Do you agree with our assessment of the proposed new Prevention of harm and offence Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

615. ***BT*** agreed that PRS should not cause harm or unreasonable offence to consumers or the general public while noting that the PSA did not propose to introduce any additional prevention of harm and offence rules beyond those currently existing under Code 14.

616. ***BT*** stated that it generally agreed with the PSA's assessment of the Prevention of harm and offence Standard against its general principles.

617. ***Telecom2*** agreed with our proposal to introduce a new Prevention of harm and offence Standard. It also said our assessment is a fair one, although there is a degree of subjectivity that will need to be guarded against.

618. ***VMO2*** agreed with our proposal to introduce a new Prevention of harm and offence Standard and agreed with our assessment of the proposed new Standard against the general principles.

Level 1 providers

619. ***Donr Ltd*** supported our proposal to introduce a new Prevention of harm and offence Standard but wanted clarification that politically motivated targeting of lawful services did not meet the definition of "harm and offence". It agreed with our assessment of the proposed new Prevention of harm and offence Standard against the general principles.

620. ***Fonix*** agreed with our proposal to introduce a new Prevention of harm and offence Standard. It also agreed with our assessment of the proposed new Prevention of harm and offence Standard against the general principles.

621. ***Infomedia*** argued that, as an effective restatement of existing standards, it has no concerns with this Standard.

622. ***Mobile Commerce & Other Media Ltd*** noted that the PSA have removed the requirements specifically in relation to the protection of children. It said it is unclear why the PSA would remove such requirements, when they have been so overly prescriptive in other areas of the code, and this is such an important point to be clear about.

623. ***One industry respondent*** agreed with our proposal to introduce a new Prevention of harm and offence Standard and made no comment in relation to our assessment of the proposed Standard against the general principles.

Trade associations

624. ***FCS*** agreed with our proposal to introduce a new Prevention of harm and offence Standard. It also agreed with our assessment of the proposed new Prevention of harm and offence Standard against the general principles.

625. ***aimm*** generally agreed with the proposed harm and offence Standard. It also generally agreed with the assessment of the proposed Prevention of harm and offence Standard against the general principles.

Charities

626. ***Macmillan Cancer Support*** agreed with our proposal to introduce a new Prevention of harm and offence standard. It said it was important for the PSA to help safeguard consumers from harm and offence. However, it also noted that, as with the other newly-introduced Standards, it is keen to understand whether the PSA has considered how its harm and offence Standard might align/cross over with the Advertising Standards Authority's (ASA) pre-existing rules on harm and offence. In addition, it said it is unclear who would take the lead upon receipt of a complaint relating to harm and offence – the ASA or the PSA?

627. ***RSPCA*** agreed with our proposal to introduce a new Prevention of harm and offence Standard. It also agreed with our assessment of the proposed new Prevention of harm and offence Standard against the general principles.

628. ***A charity respondent*** noted that, for charities, this already exists in the Fundraising Regulator Code of Practice.

629. ***Another charity respondent*** agreed with our proposal to introduce a new Prevention of harm and offence Standard. It also agreed with our assessment of the proposed new Prevention of harm and offence against the general principles

Consumers and consumer advocates

630. ***PSCG*** agreed with our proposal to introduce a new Prevention of harm and offence Standard. It also agreed with our assessment of the proposed new Prevention of harm and offence Standard against the general principles.

631. ***Which?*** said that while it did not have any specific comments on this Standard it is supportive of the fact that this Standard aims to keep the consumer interest at the heart of providers' actions at all times.

PSA's assessment of inputs received

632. We note the widespread agreement to the inclusion of the Prevention of harm and offence Standard and Requirements in Code 15. In particular, respondents were broadly supportive that PRS should not cause harm or unreasonable offence to consumers or the general public and, also, noted that we were not proposing to include any additional prevention of harm and offence rules beyond those currently existing under Code 14.

633. One respondent questioned the decision to remove the requirements relating to the protection of children. To be clear, these have not been removed. We have simply decided to include these within our proposed new Vulnerability Standards and Requirements, for reasons set out in our consultation document regarding the benefit of bringing all the Requirements relating to vulnerability under one Standard.

634. In relation to potential overlaps between the PSA and ASA, we note that we have an established Memorandum of Understanding between us and the ASA (as we do with other regulators). This provides a framework for co-operation between the two respective organisations, including effective exchange of information to assist each organisation to fulfil its regulatory responsibilities and ensuring appropriate consultation on matters of mutual interest.

Final decision

635. Having considered stakeholders' responses, we have decided to implement the proposals for a Prevention of harm and offence Standard and Requirements set out in draft Code paragraph 3.7.

Assessment framework

636. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Prevention of harm and offence Standard and Requirements against the general principles which we set out in the discussion document. A number of these we have addressed in our assessment of responses to questions 25 and 26 which we have addressed above.

637. Having done so, we consider that our new Prevention of harm and offence Standard and Requirements meets these tests, as we set out below:

- **effective** as they are designed to ensure consumer trust in the phone-paid services market is maintained and act as a deterrent to providers who are intent on causing harm. They would also continue to meet consumer expectations of being provided with promotional material and services which do not cause harm or unreasonable offence or distress. Our view is that continuing to ensure high performance by the industry in relation to reducing harm, offence and distress will improve the industry's reputation.

- **balanced** since requiring promotions and phone-paid services to be provided in a manner which does not cause harm or unreasonable offence or distress is critical for efficient, well-functioning markets that deliver good outcomes for consumers. This is vital to the overall reputation of markets as it drives consumer confidence and trust in markets which helps the phone-paid services market by supporting growth. Our view is therefore that these changes can be objectively justified as they will benefit firms through enhancing the reputation of the industry as a whole, which in turn should lead to healthy innovation and consumer choice.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

- **proportionate** as we are not introducing anything new but retaining some existing Requirements from Code 14, and removing some others and so will not be adding to the regulatory burden. In our view, the rules which would remain are important and are the minimum which we consider necessary to ensure consumers are well protected from the risks of harm or unreasonable offence or distress which the promotion and use of some phone-paid services could potentially give rise to.

- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above. In addition, the effects of the changes are clear on the face of the new Standard. We consider therefore that the Code and this accompanying statement clearly set out to industry the requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Organisation and service information Standard

Standard

Organisations and individuals involved in providing PRS must provide the PSA with timely, accurate and detailed information about themselves and the services they offer or intend to offer.

Rationale

This Standard aims to ensure that the PSA has appropriate oversight of the whole value chain involved in the provision of phone-paid services through receiving timely, accurate and detailed market information about providers of phone-paid services and their services. This helps ensure consumer confidence in phone-paid services as it provides a greater degree of transparency about the market as a whole and means that consumers can access and rely on information provided about the services and organisations they engage with.

Background

638. Section 3.4 of Code 14 sets out registration rules. Paragraph 3.4.1 of Code 14 states:

"Before providing any PRS all Network operator, Level 1 and Level 2 providers must register with the PSA subject only to paragraph 3.4.3 below."

639. It is currently a requirement that registration needs to be renewed annually and any breaches of the Code and sanctions imposed will be linked to the phone-paid service provider's registered details. It is also a requirement that Level 2 providers must provide the PSA, within two working days of the service going live, with details to identify services and the Level 1 providers involved so that these details can be added to the register and be made available to consumers.

640. Following a review of the information which is required as part of registration, the PSA issued a statement in September 2018 which set out the additional information we decided would be required under service registration. This is detailed in our consultation document.

Consultation proposals

641. We proposed to introduce a new Organisation and service information Standard. This Standard was largely adapted from the current Code 14 registration requirements. We also proposed to include the following new Requirements within this Standard:

- phone-paid service providers must identify and provide contact details for the individuals within the organisation with responsibility for DDRAC, platform security, vulnerable consumers and overall regulatory compliance with phone-paid services (Code 15 paragraph 3.8.3)
- merchants must, before making a service accessible to consumers, provide to the PSA all information (including any relevant numbers and access or other codes) that the PSA requires (Code 15 paragraph 3.8.4 (a))
- merchants must provide the identity of any other PRS providers involved in the provision of the service, as well as information about any other person contracted for, or otherwise involved in, the promotion and delivery of the service (Code 15 paragraph 3.8.4 (b))
- phone-paid service providers must keep all information provided to the PSA as part of registration up to date. The PSA must be notified of any changes to such information promptly and in any event within five working days of the change (Code 15 paragraph 3.8.6).

642. We asked the following questions:

Q27: Do you agree with our proposal to introduce a new Organisation and service information Standard? Please provide an explanation as to why you agree or disagree.

Q28: Do you agree with our assessment of the proposed new Organisation and service information Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

643. *BT* agreed with the proposals for an Organisation and Service Information Standard. It noted that the register is dependent on timely and accurate market information. It also mentioned that MNOs maintain their own registers and search tools for charge to bill services which reflect how charges are displayed on consumer bills. It said that due to different technological capabilities for providers, there is some variation in how services are displayed. It also noted there are some discrepancies between MNO's own registered information and the information displayed on the PSA's central register.

644. It wanted the PSA to play a greater role in verifying the accuracy of registration information by checking information for new market entrants, conducting sample testing of in-life registration information and undertaking more investigation and enforcement action to resolve registration gaps, which would also act as a deterrent for non-compliance.

645. It also welcomed plans to enhance the registration extranet to support industry but encouraged the PSA to engage with industry on this, ideally in advance of commencement of the new Code.

646. It also supported draft Code paragraph 3.8.3 to introduce new senior management responsibilities but said it would like the PSA to provide further clarity in respect of the level of seniority expected, any reporting requirements and the potential consequences for non-compliance.

647. It also agreed that an effective register is an essential resource for the PRS market and would help providers discharge their DDRAC responsibilities.

648. ***Telecom2*** said that registration of providers is essential to regulating the industry and assisting consumers but was concerned that the current system is not working correctly. It also said that without the PSA validating the data it is of only limited value. It also said the wording at draft Code paragraph 3.8.4 (b) "...about any other person contracted for or otherwise involved in, the promotion and delivery of the service" is too wide ranging and will draw in people that aren't relevant to the actual management and operation of the service. It said this needs to be tightened up. It also argued the requirement to notify the PSA of changes within five days is not feasible.

649. In respect of our assessment framework, it said it was:

- not effective unless the PSA take responsibility for verifying the details provided by new entrants on registration and any subsequent changes
- not balanced as all the responsibility for the Standard is placed on L1s and L2s
- discriminatory against SMEs who may not have the data or the structure demanded
- not proportionate in that the code places the entire burden data on industry
- transparent but only by highlighting all the flaws in the Standard.

650. ***VMO2*** broadly agreed with the proposal to introduce a new Organisation and service information Standard albeit had some concerns relating to our assessment of the proposed Standard against the general principles. It noted that draft Code paragraph 3.8.15 has not considered the impact of this on the way MNOs currently display this information on their bills and websites. It noted there are specific limitations to what can be presented on the bill but VMO2 has alternative methods to inform their customers, such as the premium service checker which provides further detail to the information presented on the bill.

651. It also believed that for effective, proactive regulation, the PSA needs to be able to verify the information provided to them as part of the registration scheme. It said having this information verified will only enhance the existing process allowing providers to compare information for DDRAC purposes.

652. ***Vodafone*** was concerned that the PSA has decided to take no responsibility for validating the information within its registration system. It was concerned this is a missed opportunity and a glaring weakness to the detailed DDRAC Requirements being placed upon industry. It said it is not acceptable for the regulator to have potentially inaccurate information and to expect industry to use that as the cornerstone of its due diligence.

653. It also recommended that the PSA considers creating an API lookup into the Companies House database that stops a business from registering a name different to that recorded in Companies House. It was concerned that the requirement to use the name as registered may differ slightly from MNO to MNO simply due to data entry practices as they are input by different Level 1 providers. It said the PSA needs to better understand the system requirements and associated costs for this Requirement in order to introduce an extended implementation period and to make a lookup API available to check DDRAC information automatically in order to avoid typographical variations. It also said the registration process should require the merchant or intermediary provider to register every web entity / brand they create and the time periods when they are actively acquiring customers. It said this record must also record the last date customers of that service were billed in order to provide an indication of genuine live services.

Level 1 providers

654. ***Donr Ltd*** was happy with our proposal to introduce a new Organisation and service information Standard. However, it argued that registration for charities felt like an unnecessary step since charities

are regulated by the Charities Commission(s), the Fundraising Regulator, HMRC for Gift Aid claims and in the case of a lottery, the Gambling Commission. While it accepted that registration with the PSA is free for charities, it did feel the process of registering is unnecessary and provides little additional benefit to the value chain. It suggested that a registered charity number is sufficient identification with the PSA, with the Level 1 intermediary providing core service details like escalation points and service details. It said that by removing this extra step for charities, it would be possible to streamline the adoption of PRS-based charity donations for the UK's over 200,000 registered charities and bring this into line with how card payments operate for a charity.

655. In terms of Q28, it did not feel this is proportionate for charities, as there is an extra burden on them to register and renew annually, which is in addition to Charity Commission filings. It said that a proportionate burden would be to forgo a detailed registration and simply have either the charity or more practically, the intermediary enter the charity number into the PSA's registration scheme.

656. ***Fonix*** agreed with our proposal to introduce a new Organisation and service information Standard and also agreed with our assessment of the proposed Standard against the general principles.

657. ***Infomedia*** agreed with the introduction of the Organisation and service information Standard as it is drafted and noted that it seems like a relatively minor extension of the existing information requirements. It said it would welcome further information regarding how the PSA intends to use the information it gathers, otherwise it has the appearance of a paperwork exercise only. It said its concern is that the personal contact details of individuals under the proposed draft Code paragraph 3.8.3 should not be published and would like the PSA's assurance that these details will not be published.

658. ***Mobile Commerce & Other Media Ltd*** said that while the introduction of this Standard is welcome, it does not go far enough. It said the PSA are the gateway to the PRS industry, and more should be done by us to prevent people entering the market where they have poor intentions and disregard for the market and consumers. It argued the PSA needs to go further to verify the information given. It said this Standard is not effective as it does not prevent anyone from entering the market, it is not balanced as it is clearly sided so that the PSA does minimal work and all of the verification is left for merchants to undertake at their own cost, and it is not proportionate to expect one party to undertake no due diligence and yet someone else to undertake an onerous amount.

659. ***One industry respondent*** agreed in principle but with some concerns:

- it asked that verification is carried out and that verified information is made available to assist in open and shared DDRAC processes
- it was not clear on the level of accountability that aggregators have in ensuring their customers are properly registered and their responsibility if that information is withheld from them or could not reasonably have been known.

660. In terms of Q28, it said it does not agree and needed clarification on the level of verification the PSA would carry out, whether that can be relied on by the industry and the accountability expected of those in the value chain for the information others they are contracted with are submitting.

Broadcasters

661. ***Global*** said that in principle, it was fine with the Organisation and service information Standard but it needed to be acknowledged that the existing registration system is not yet fit for purpose. It argued this Standard needs to be aligned with a condition that the PSA will provide a robust, consistent, effective and secure system for registration and that any issues with that system won't be held against providers. It also noted that, with regards to draft Code paragraph 3.8.3, often these services are not served within the registered organisation, so what is the protocol for a "registered person" within the organisation where that service is outsourced?

Trade associations

662. ***aimm*** agreed that robust validation and verification of phone-paid service providers is essential to protecting consumers and growing a healthy and sustainable market. However, it was concerned that without any additional requirements, the current registration process is still suffering from teething problems and is not seen as effective. It sought assurances that these will be fixed, and the platform confirmed as stable before further changes commence.

663. It also expressed disappointment that there is still no proposal for the PSA to verify registration data. It noted this is one of the main concerns among operators. It also noted that some of the Requirements will not be appropriate for small businesses, for whom some of the information is not relevant, and therefore this is not equitable. It sought more clarity on the assessment of financial viability and how the PSA will ensure it is not restrictive to new businesses and entrepreneurs. It noted that registered charities currently have an additional burden of registering with the Charity Commission and again with the PSA, which members are not convinced is necessary, considering the low risk attached to their services. It also felt the wording covering services using direct carrier billing or provided via app stores is lacking. It also sought clarification as to why it is necessary at draft Code paragraph 3.8.4(b) to provide details about persons contracted for or otherwise involved in, the promotion and delivery of services. It suggested that if parties are not in the value chain, or PRS providers, then this is not necessary and may be onerous.

664. It also said MNOs are concerned that they are to be held accountable for merchant providers registering all PRS and associated numbers before enabling consumer access to a service. It said this is simply not feasible and would increase resource and therefore the cost of doing business significantly. It also sought assurances that these obligations are for all in the value chain. It also said the proposal requiring providers to notify the PSA of changes within five days is not possible.

665. ***aimm*** made the following comments relating to our assessment of the consumer privacy standard against the general principles:

- not effective - oversight of the whole value chain involved in the provision of phone-paid services is undermined if the information provided is not verified. It felt strongly that this could be very effective but falls short in this respect.
- not balanced – it said there is no accountability on the regulator for protecting the consumer against rogue newcomers
- partially fair and non-discriminatory – it said smaller businesses may not have this information to provide
- disproportionate - it said it disproportionately increases the burden on industry and removes any accountability from the PSA for regulating rogue newcomers
- partially transparent – it said explanations and appropriate wording that adequately covers carrier billing and app stores is frustratingly absent.

666. ***Mobile UK*** said it did not understand the scope and extent of the requirement at draft Code paragraph 3.8.5 which require network operators and intermediary providers to ensure that all PRS and associated access numbers are registered with the PSA before enabling a service to become accessible to consumers. It said at first sight, it is a very onerous and all-encompassing requirement, unless it refers only to the first time a PRS access number is enabled on the network. It said the PSA should also confirm that this requirement is only applicable to voice services regulated by the PSA, and does not extend to MNO direct billing services which do not use access numbers.

Charities

667. ***British Heart Foundation*** agreed that a comprehensive registration scheme is necessary to protect consumer interests when they are using phone-paid services. However, it argued that a separate PSA registration is not necessary for registered charities, as a higher level of scrutiny and oversight is already provided by other regulators with whom they are required to register.

668. It noted charities are regulated by the Charity Commission for England and Wales, Charity Commission for Northern Ireland, and by OSCR in Scotland. There is separate regulation for fundraising, and a comprehensive Code of Fundraising Practice that all fundraising organisations in the UK are expected to comply with, and which includes standards on text giving and society lotteries with references to the PSA's regulations where appropriate. This is enforced by the Fundraising Regulator in England, Wales and Northern Ireland, and by the Scottish fundraising Panel in Scotland. Charities are, where necessary, also required to register with the ICO, Gambling Commission and other regulators depending on operations.

669. On this basis, it argued that charities should be able to register with the PSA by providing their registered charity number, and without the need to go through the full registration process. Registered charity status demonstrates that appropriate vetting and oversight is already in place,

and these checks provide a higher level of vetting and scrutiny than the PSA's registration system. As such, the requirement to go through the full registration process separately creates unnecessary administration for charities.

670. ***Chartered Institute for Fundraising*** understood why a comprehensive registration process in this area is necessary for the private sector, given the fast-growing number of organisations in this space. In terms of charity registrations, it requested that we include charities in draft Code paragraph 3.8.9 as one of the categories exempt from registration and from re-registering every 12 months. This was because charities already go through a rigorous registration process by the Charity Commission which includes giving detailed information on governance and finances.

671. ***Macmillan Cancer Support*** said that, regarding charity registrations, it would encourage the PSA to consider including charities in draft Code paragraph 3.8.9 as one of the categories exempt from re-registering every 12 months. It noted that charities already go through a rigorous registration process by the Charity Commission which includes giving detailed information on governance and finances. It therefore felt that if an organisation has a valid charity number, this should be sufficient proof that they are meeting the PSA's standards.

672. ***One charity respondent*** agreed with our proposal to introduce a new Organisation and service information Standard for companies in the private sector but felt it is unnecessary for the charity sector. In responding to Q28, it also noted how charities are regulated and recommended that charities should be made exempt from registering with the PSA as well, and that the relevant charity regulator's registration is used instead, which provides a higher level of vetting and scrutiny than the PSAs registration system. As charities are not required to pay the PSA's registration fee, this would remove an additional layer of administration for charities, without affecting the PSA's income.

673. ***RSPCA*** agreed with our proposal to introduce a new Organisation and service information Standard. It also agreed with our assessment of the proposed new Organisation and service information Standard against the general principles.

674. ***Two charity respondents*** agreed with our proposal to introduce a new Organisation and service information Standard. One of those respondents also agreed with our assessment of the proposed new Organisation and service information Standard against the general principles.

Consumer and consumer advocates

675. ***PSCG*** agreed with our proposal to introduce a new Organisation and service information Standard and believed that companies operating phone-paid services need to be subjected to greater scrutiny. However, it believed that services should need to be registered before they start operating. It also said it would like to see the Service checker carry details of the payment intermediary involved in each service. It also supported the proposal of having a named overall contact within the merchant organisation. It also agreed with our assessment of the proposed new Organisation and service information Standard against the general principles.

676. ***Which?*** supported the aims of this Standard. It believed that the requirement for providers to share details with the PSA about themselves and the services they intend to offer will help increase the barriers to market entry and therefore should provide additional protections for consumers against bad actors entering the market. It agreed that it is important that registration information is verifiable and kept up to date.

PSA's assessment of inputs received

677. Respondents were broadly supportive of our proposed Organisation and service information Standard and Requirements and agreed robust validation and verification of phone-paid service providers is essential to protecting consumers and growing a healthy and sustainable market. We also received a number of detailed comments on the Standard and Requirements. We summarise these below.

The PSA's role in validating registration information

678. We note that a number of respondents wanted the PSA to provide a greater role in terms of validation of registration information, particularly company names and directors, at the point the information is provided to the PSA.

679. We have carefully considered these points and while we do not believe there is anything in the draft

Code which would prevent the PSA from adopting a greater validation/checking role in terms of validating information, our preferred approach, as we set out in the consultation document, is one of enhanced notification of information rather than enhanced validation of information. That said, and as previously discussed, this is likely to be better considered, and discussed, as part of developing our published procedures given it is to do with providing both clarity and transparency relating to the PSA's procedures. Also, this is likely to be relevant to our consultation with stakeholders on our annual business planning and budget process. This is because, if the PSA were to agree to perform a higher level of validation of registration information, this is likely to require additional resourcing and have funding implications.

Provision of contact details

680. A number of providers sought clarity with regards to draft Code paragraph 3.8.3 in circumstances where any of the specified roles are performed by third parties who sit outside the regulated value chain. We agree with these concerns and the need for further clarity. We have, therefore, added "or within any contracted third party" to the wording of the Requirement. We consider this will provide certainty that network operators, intermediary providers and merchant providers must provide the name and contact details of the individual(s) within the organisation with overall responsibility and accountability for specified activities, including where those contact details relate to parties who sit outside the value chain.

681. A number of respondents also requested clarity relating to the level of seniority for the roles mentioned in draft Code paragraph 3.8.3, including the position of those providers operating voice services, merchants and third parties. We will provide this clarity in our published guidance which we will be shortly consulting on.

682. Some respondents asked for confirmation that personal details would not be published and we can confirm that it is not our intention to do this. Draft Code paragraph 3.8.4(c) makes clear the information that we will be required to publish.

683. We are also including an exemption for voice-based providers to comply with the Requirements at draft Code paragraph 3.8.3(b). This relates to the Requirement to provide the name and contact details of the individual(s) within the organisation with overall responsibility and accountability for platform security and compliance with the technical standards set out at Annex 3. We are including this exemption in order to ensure consistency, and align with our current proposed exemption from draft Code paragraph 3.10.3 for voice-based service providers to comply with the technical standards set out at Annex 3.

Additional requirements on merchant providers

684. We note a number of respondents commented on the detailed drafting of draft Code paragraph 3.8.4 which includes further requirements in respect of registration that apply to merchant providers.

685. A number of these stakeholders were concerned that these provisions were drafted too broadly and, in places, are overly onerous.

686. We agree that further clarity is required as to when these Requirements apply. We are, therefore, proposing to reword this paragraph to take account of scenarios where we would not expect merchant providers to register. To this end, we have added "unless an exemption under paragraph 3.8.9, or a relevant permission under 2.6.2 applies" to draft Code paragraph 3.8.4. We have also removed reference to the term "or otherwise involved in" from draft Code paragraph 3.8.4(b) which now reads: "Merchant providers must provide the identity of any other PRS providers involved in the provision of the service, as well as information about any other person contracted for the promotion and/or delivery of the service." We have also added "Merchant providers are not required to provide details in respect of paragraphs 3.8.3(a) and 3.8.3(b) above unless they are also performing the role of an intermediary provider" to draft Code paragraph 3.8.3. This is to provide clarity as the circumstances in which Merchant providers would not be required to provide contact details for individuals responsible for DDRAC policies and procedures, and platform security and technical standards compliance.

687. We do not agree that the proposed Requirement to update information within five working days of any change (draft Code paragraph 3.8.4(d)) is not feasible. In particular, we note that five working days is an increase from the two working days currently required under Code 14. We are, therefore, not minded to change this proposed Requirement.

Requirement that all PRS and associated access numbers are registered with the PSA before enabling a service to become accessible to consumers

688. We also note that some respondents requested further clarity about draft Code paragraph 3.8.5 relating to the situations in which merchants are not required to register with the PSA. In light of these comments, we have decided to amend the requirement at draft Code paragraph 3.8.5 to include the caveat "unless an exemption under paragraph 3.8.9. or a relevant permission under paragraph 2.6.2. applies".

Application of registration requirements to charities

689. We have also carefully considered comments from charities relating to registration requirements and whether they should be applicable to charities. In particular, we note that it was argued that charitable donation services are regulated by the Fundraising Regulator and, therefore, whether it was proportionate for them to also be subject to PSA regulation. However, and as previously discussed, we remain of the view that where providers (charities or otherwise) choose to be active in different regulated markets, they must comply with the regulations of those different sectors. In drafting the new Code, we have taken account of regulatory requirements in other markets. In doing so, we consider our regulations, as set out in Code 15, are proportionate to the harms we are seeking to tackle from potential abuse of phone-paid services.

690. In particular, we note that registration places very little burden on registered charities, not least since they are already exempt from paying the registration fee. The information that is provided is valuable to consumers and to others in the industry. Consumers benefit from being able to access information through the service checker helping them to resolve questions they may have about their interaction with phone-paid services, including donations to charities. Information is also made available to others in the industry as part of their due diligence checks. It is our view, therefore, that registration of charities is essential to allowing them to use phone-payment as a fundraising mechanism.

Final decision

691. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 3.8 on our proposed Organisational and service information Standard, with the following amendments:

- we have included the wording "or within any contracted third party" to be clear that the requirement on network operators, intermediary providers and merchant providers to provide the name and contact details of the individual(s) within the organisation with overall responsibility and accountability for specified activities includes where those contact details relate to parties who sit outside the value chain (draft Code paragraph 3.8.3)
- we have included an exemption for voice-based providers to provide the name and contact details of the individual(s) within the organisation with overall responsibility and accountability for platform security and compliance with the technical standards set out at Annex 3 (draft Code paragraph 3.8.3(b))
- we have included the following wording "Merchant providers are not required to provide details in respect of paragraphs 3.8.3(a) and (b) above unless they are also performing the role of an intermediary provider" (draft Code paragraph 3.8.3)
- we have included the following wording "unless an exemption under paragraph 3.8.9, or a relevant permission under paragraph 2.6.2 applies" (draft Code paragraph 3.8.4)
- we have removed the following "or otherwise involved in" as we are concerned this may be unintentionally too broad (draft Code paragraph 3.8.4(b))
- we have amended the reference to "promotion and delivery of the service" to "promotion and/or delivery of the service" (draft Code paragraph 3.8.4(b)
- we have included the following wording "unless an exemption under paragraph 3.8.9, or a relevant permission under paragraph 2.6.2 applies" (draft Code paragraph 3.8.5).

Assessment framework

692. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Organisation and service information Standard and Requirements against the general principles which we set out in the discussion document. A number of these we have addressed in our assessment of responses to questions 27 and 28 which we have addressed above.

693. Having done so, we consider that our new Service and organisation information Standard and Requirements meets these tests, as we set out below:

- **effective** as they are designed to ensure that we have appropriate oversight of the whole value chain involved in the provision of phone-paid services through receiving timely, accurate and detailed market information about providers of phone-paid service and the services they provide. This will also result in enhanced transparency for consumers who will be able to make more informed decisions about providers and services. The need for additional upfront checks at the point of registration will be a key aspect of our proposed new regulatory approach in terms of verification.

- **balanced** as the additional information we are requiring seeks to address identified areas of weakness with our current registration system and is in our view objectively justified. We consider that these changes will provide greater transparency across the value chain, not only for those within the value chain, but also for the PSA. This should result in a far more effective regulatory regime and encourage more effective use of systems and, also, reduce our administrative burden in terms of our engagement with providers. It is also worth noting that some stakeholders have argued that we should implement a far more rigorous regime based on the FCA's approach to authorisations. However, as above, while we acknowledge that this may have value in ensuring greater discipline in terms of market entry, this is not something which is legally possible under the current statutory framework.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against particular descriptions of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

- **proportionate** as they should not disproportionately increase the burden on industry, as they are relatively limited and, in our view, represent the minimum necessary to be able to achieve our objective. We note that some of the new changes relating to the provision of individual's contact details (not making services accessible to consumers before providing information to the PSA; providing information about the identity of any other PRS providers involved in the provision of the service; and keeping information up to date including notifying the PSA promptly of any changes) all build on existing Code 14 Requirements and, in some cases, are very minor changes.

- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above. The effects of the changes are clear on the face of the new Standard. We consider therefore that the Code and this accompanying statement clearly set out to industry the requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Due diligence, risk assessment and control (DDRAC) Standard

Standard

Organisations and individuals must perform effective due diligence on any person or organisation with whom they contract in relation to PRS and must conduct a full and thorough assessment of potential risks arising from the provision, content, promotion and marketing of PRS on an ongoing basis.

Rationale

This Standard acknowledges the importance of effective DDRAC processes which are central to good business practice as it enables all parties in the value chain to operate with confidence and assurance that the practices of those they contract with in the delivery of phone-paid services are compliant and effective.

Background

694. DDRAC is required to be undertaken by any party that contracts with another party in the delivery of a phone-paid service. This includes undertaking DDRAC on any party involved in the promotion, operation, verification, charging and post-purchase handling of a service. Effective DDRAC has a positive impact on consumers, the phone-paid services market and the parties operating within it.

695. Section 3.3.1 of Code 14 states:

"All Network operators and Level 1 providers must perform thorough due diligence on any party with which they contract in connection with the provision of PRS and must retain all relevant documentation obtained during that process for a period that is reasonable in the circumstances."

696. In addition to the Code provision, there is currently DDRAC guidance in place which was first published alongside Code 12.

697. DDRAC obligations remain an area of high interest to us as a key method of enabling providers to adopt and maintain good practices that benefit them and deliver good outcomes for consumers of phone-paid services. Our current enforcement strategy has a high focus on DDRAC cases.

698. We undertook a review of existing DDRAC guidance in 2019/20. Through our investigations and monitoring work we identified a number of issues which we set out in our consultation document.

699. The high-profile case against a Level 1 provider, Veoo Ltd in September 2019, further highlighted the risks and issues associated with very poor due diligence. The Tribunal found that the company had knowingly breached its DDRAC requirements and had provided false or misleading information to the PSA.

700. We intended to consult on revised DDRAC guidance in March 2020 but due to the pandemic this was put on hold and we indicated that this work would be taken forward as part of our Code 15 review.

Consultation proposals

701. We proposed to introduce a new DDRAC Standard. This combined existing DDRAC Requirements from Code 14 and elements from our existing published guidance as well as our updated (unpublished) guidance which was updated following our review of DDRAC guidance in 2019/20.

702. These proposed changes were intended to ensure there is a shared understanding between us and industry that effective DDRAC is a fundamental and vital aspect of operating a phone-paid service. The proposed Requirements were as follows:

- relevant providers must undertake thorough DDRAC on any person with whom they contract in connection with the provision of a phone-paid service, prior to entering into any contract and/or rendering any service accessible to consumers (draft Code paragraph 3.9.1)
- relevant providers must continually assess the potential risks posed by any person with whom they contract in respect of the provision, content, promotion, and marketing of phone-paid services (draft Code paragraph (3.9.2)
- relevant providers must comply with the additional DDRAC Requirements set out at Annex 2 of Code 15 which sets out a list of the information that should be collected as part of due diligence (draft Code paragraph 3.9.3)
- providers of phone-paid services must only enter into contracts relating to PRS with other providers that are registered with the PSA, except where an exemption from registration applies (draft Code paragraph 3.9.4)
- where services have migrated from one intermediary provider to another, renewed checks and verification of migrated data must be undertaken. Reliance cannot be placed on any previous DDRAC undertaken (draft Code paragraph 3.9.5).
- all DDRAC policies and procedures which are in place, and all DDRAC undertaken in relation to third parties, must be approved and signed off by the director or equivalent person who has overall responsibility for DDRAC compliance (draft Code paragraphs 3.9.6 and 3.9.7)

- relevant providers must have contracts in place that allow them in appropriate circumstances to suspend or terminate their relationships with parties with whom they have entered into contracts with for the provision of phone-paid services where they reasonably suspect the occurrence of non-compliant activities (draft Code paragraphs 3.9.8 and 3.9.9)
- there are provisions in place to make relevant DDRAC information available to the PSA, on request, either relating to providers' own DDRAC policies and procedures or those of third parties with whom they have entered into contracts with for the provision of phone-paid services (draft Code paragraphs 3.9.10 and 3.9.15)
- relevant providers must ensure that any persons with whom they contract include DDRAC obligations in their own contracts with any other persons in the PRS value chain who are involved in the provision of the service (draft Code paragraph 3.9.12)
- where a network operator contracts with a PRS provider which is acting in the capacity of both an intermediary provider and a merchant provider, the network operator is responsible for undertaking DDRAC in respect of that provider and its services (draft Code paragraph 3.9.13)
- providers of phone-paid services must use the information obtained through their DDRAC processes to inform their ongoing risk assessment and control in respect of each person with whom they contract and any associated services (draft Code paragraph 3.9.14).

703. We asked the following questions:

Q29: Do you agree with our proposal to introduce a new DDRAC Standard? Please provide an explanation as to why you agree or disagree.

Q30: Do you agree with our assessment of the proposed new DDRAC Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

704. ***BT*** broadly agreed with the principles underpinning proposed DDRAC Standards but said it would welcome greater clarity as to how the PSA plans to strengthen accountability for DDRAC across the value chain. In particular it said it would like to see clarity of DDRAC responsibilities in guidance, in respect of roles, and also app stores and related parties in the value chain. It said that PSA should further define what constitutes "reasonable steps" in respect of ensuring contracting parties are discharging their DDRAC responsibilities in draft Code paragraph 3.9.11.

705. ***BT*** said it would like the PSA to undertake checks of due diligence information at market entry and on an ongoing basis for the register, for example validation of publicly available third-party information, believing that PSA's verification of information would act as a further check and balance to ensure accuracy, and assist the value-chain with its DDRAC responsibilities.

706. It broadly agreed with the PSA's assessment of the DDRAC Standard against its general principles, although it said it would welcome further clarity as to the practical application of those principles within guidance.

707. ***Telecom2*** said DDRAC is an essential component in safeguarding consumers and no one would argue that it shouldn't be carried out. It said the DDRAC Requirements in the draft Code are onerous and, in some cases, ambiguous. It said some of the data being sought will not apply to SME providers who may be very small. It also questioned where individual officers are to be nominated does this mean that they will have responsibility and even personal liability if there is a failure. It also raised the question of DDRAC on companies that the provider is not directly contracted with and has no control over. It said a company cannot be held accountable for one they have no direct control over.

708. It made the following comments in relation to our assessment against the general principles:

- not effective because much of the data will simply not be available for SMEs not balanced because it requires providers to be responsible for entities they have no control over

- not fair and non-discriminatory because SMEs will not have data to comply with DDRAC and won't have the resource to maintain such a high level of DDRAC on their clients, the cost would be prohibitive
- not proportionate as the new standard will massively increase the workload of providers with little if any additional benefit
- not transparent as there remains uncertainty, particularly the levels or responsibility and liability of nominated officers.

709. ***VMO2*** broadly agreed with the proposal to introduce a new DDRAC Standard. It did, however, highlight some concerns regarding the assessment of the new DDRAC Standard against the general principles. In particular, it asked for confirmation that it would only be held responsible for those it is directly contracted to within the value chain and amendments are made to the relevant clauses to ensure clarity in the proposed code. Additionally, it referenced draft Code paragraph 3.9.13 which referred to a network operator contracting with a PRS provider which is acting in the capacity of both an intermediary provider and a merchant provider. It believed that its current process adequately covers its responsibility even with respect to app stores where it takes reasonable steps at set up and on an ongoing basis. VMO2, therefore, requested that the PSA recognises that no further steps would need to be carried out in this respect.

710. It said it would like the PSA to acknowledge that there would be a significantly increased burden on MNOs to be responsible for gathering and verifying the information in Annex 2 such as Annex 2.3(l). It said for larger intermediary providers or merchant providers this would not be feasible and is onerous. It noted the current DDRAC process verifies the names and address of key personnel who work specifically on the PRS in question, which it considers to be sufficient.

711. ***Vodafone*** said it understood from the consultation document (paragraph 351) that it would only be responsible for those elements which are within its control. It said its understanding is that this means those companies with whom Vodafone has a direct contractual relationship. It did, however, reference draft Code paragraph 3.9.11 and Annex 2 which it said inadvertently appeared to suggest that it may be liable for potential breaches by any member of the value chain including those over which it has no direct influence. It requested that the necessary clarification is provided.

Level 1 providers

712. ***Donr Ltd*** said that extensive guidance needs to be given in this area, especially due to how little consideration has been given to registered charities in Annex 2 of the draft Code. It noted that many of the points requested (e.g. G – l) are already required by the Charity Commission or overlaps this, so creating an unnecessary duplication of effort for charities. While it recognised that DDRAC could have been a contributory factor in preventing Veoo type issues, it did not feel charities should face additional burdens without actual evidence of harm being provided by the PSA.

713. In terms of Q30, it did not feel this is a proportionate response for charities as they do not face many of the issues being raised. While other users of PRS would benefit from this approach, given the multiple regulators overseeing registered charities, it suggested a light touch approach for charities to reduce the administrative costs and time, to allow donations to be spent on a charity's primary aims and goals.

714. ***Fonix*** agreed with our proposal to introduce a new DDRAC Standard. It noted that DDRAC should have minimum standards and requirements to remove any ambiguity around what is considered sufficient DDRAC and have a clear structure for everyone in the value chain. It also agreed with our assessment of the proposed new DDRAC Standard against the general principles.

715. ***Infomedia*** said that it agrees with the DDRAC Standard other than draft Code paragraph 3.9.4 which it considered to be unacceptable in its current drafting. This was because it is not within the PSA's powers to determine who a private organisation does or does not enter into a contract with. It believed this paragraph is lacking context around the purpose and the intention is that this only relates to the supply of PRS services within the UK. It suggested a possible alternative would be "PRS providers should, as part of their DDRAC, ensure that other PRS providers with whom they contract to supply PRS services [regulated by the PSA] within the UK are properly registered with the PSA unless exempt under paragraph 3.8.9".

716. It said it agreed with our proposed assessment of the proposed new DDRAC Standard against the

general principles, but that it did have a concern with the requirement of draft Code paragraph 2.3(n) in Annex 2. It noted this paragraph places a substantially more onerous burden of investigation than other requirements given that it is drafted so broadly and would require a more highly forensic investigation of affairs than is proportionate. It said that it is unreasonable for it to be expected to identify where those individuals did not fall into either of those two proposed categories, "involved or connected with", and that not all regulatory action is published. It suggested tempering this requirement accordingly to include a reasonableness or best endeavours statement, and (as it is acceptable to do in draft Code paragraph 2.3(m) in Annex 2) seek undertakings or warranties regarding unpublished or non-directorship involvements with other companies.

717. ***Mobile Commerce & Other Media Ltd*** was concerned about the proposed addition of measures which it argued is unfair on PRS providers and being implemented on a "change for changes sake" basis. It was concerned the Standard, Requirements and Annex are too onerous and overly prescriptive. It argued this Standard is not effective, proportionate or transparent because the PSA are asking the value chain to do something they are unwilling or unable to do themselves

718. ***One industry respondent*** agreed in principle with our proposal to introduce a new DDRAC Standard but had some concerns as to whether the individual responsible has any personal liability. It said if this is the case then this needs to be very clearly set out and understood. It also said that bad actors work hard to hide the fact they are bad actors and it needs to be recognised that this may not have been reasonably discoverable in early aspects of DDRAC, or at all. It said its response to Q30 is subject to clarity on the personal liability point raised.

Trade associations

719. ***aimm*** agreed DDRAC is essential to ensure consumers are protected. It noted many of the DDRAC Requirements are already covered in contractual relationships within the value chains that already exist. It did, however, say, that there is a concern that this is not equitable for smaller businesses. It noted that some of the items listed in Annex 2 felt overly onerous, such as paragraph 2.3 (e) regarding the compliance history of key officers and staff within the intermediary provider and/or merchant provider. It also questioned how this would be monitored for app stores.

720. It also questioned the link between the compliance history of a business in the value chain and individual liability. It said it seems sensible that a responsible individual needs to be identified within an organisation for ease of communication, but the proposal suggests that there is also an intention that they have responsibility for that function. It said the parameters that trigger that liability must be very clear such that there is no confusion and personnel understand the implications of the role they are being asked to fulfil.

721. In addition, it noted there is a requirement that the MNO's/intermediaries ensure that they only contract with persons of fit standing to provide PRS. It said that clarity is really important as to whether a Head of Compliance of an organisation that represents a large sector of the industry (and as such may have accrued compliance issues) would become progressively less fit. It also commented that the value chain is happy to carry out DDRAC on those they contract with, but cannot be held accountable for those that they do not directly have that relationship with. It is beyond their control. It is important however that all those in the value chain are recognised in the Code and can be identified as good providers of that service, for instance compliance houses.

722. It also noted that network operators are concerned that the Requirement at draft Code paragraph 3.9.13 is unworkable and this information is simply unavailable to them from the app stores whom they partner with, and which cover the operation of thousands of apps.

723. ***aimm*** also made the following comments relating to our assessment of the DDRAC standard against the general principles:

- partially effective – it said this will only help in as much as this information is available, which may not be the case with smaller businesses who simply don't have these functions/ resources available or to network operators seeking information from app stores that they are unlikely to ever be in receipt of.

- partially balanced – it said the value chain can only be responsible for those they contract directly with. Equally, those in the value chain who provide quality services but are not recognised deserve more balance with the proposed Code, for example compliance houses.

- partially fair and non-discriminatory – it said this is not equitable for smaller businesses with less resource and funding available to them. There is no doubt that on-going monitoring obligations will greatly increase the cost of regulation for PRS providers. This and the increased liability make the PRS market even more difficult and expensive to operate in for a small business where the responsible person for all areas could be the same person.

- partially proportionate – it said this will increase the burden on industry, for example in relation to network operators who, within this proposal, will have to undertake DDRAC in respect of the app stores and all of their services.

- partially transparent - it said it is not clear as to the level of personal liability that the responsible person will carry.

724. ***Mobile UK*** agreed that carrying out due diligence on contracted parties is an essential safeguard. It welcomed the PSA's statement that providers would only be liable for those elements which are within their control. That said, it noted there are several places where obligations seem to stretch beyond immediately contracted parties. Mobile UK sought confirmation that this is not the intention or the effect. It argued that draft Code paragraph 3.9.11 places an unreasonable regulatory burden on MNOs and would not be practical to enforce. It was concerned this would require third parties to second guess the subjective views of the PSA. It also referred to the information listed in Annex 2 which must be collected and reviewed (at draft Code Annex paragraph 2.3(a) to (q)) and said that it needs to be clearer that Annex 2 cannot create a general requirement on PRS providers to collect all information about everything in their respective value chains. It said the responsibility needs to sit with those who have the direct contractual relationship. It also said the same principle must read across to the app stores, where any DDRAC requirement must lie with the app stores to apps they enable for sale.

Charities

725. ***RSPCA*** agreed with our proposal to introduce a new DDRAC Standard. It also agreed with our assessment of the proposed new DDRAC Standard against the general principles.

726. ***One charity respondent*** noted that, for charities, this was already a requirement of the Fundraising Regulator and the Charity Commission. It said the Standard is sensible but not new ground.

727. ***Another charity respondent*** agreed with our proposal to introduce a new DDRAC Standard. It also agreed with our assessment of the proposed new DDRAC Standard against the general principles.

Consumer and consumer advocates

728. ***PSCG*** strongly agreed with our proposal to introduce a new DDRAC Standard. It argued there needs to be greater accountability on the part of providers for the merchants with which they contract. It said the Veoo case highlighted how easy it was for bad actors to infiltrate the value chain. It argued that if MNOs had taken this responsibility seriously, many of the PSA investigations and tribunals of recent 12 years would have been unnecessary. It wanted MNOs to be held accountable when an exemption provided to them is abused by one of the other parties in the value chain. It also agreed with our assessment of the proposed new DDRAC Standard against the general principles.

729. ***Which?*** supported our proposed DDRAC Standard and believe this will assist efforts to increase barriers and prevent bad actors from market entry. It agreed with our consideration that upstream providers also have a role to play to ensure compliance responsibility flows down the value chain through contractual arrangements. It noted that the existing DDRAC guidance sets out that one of the cornerstones of DDRAC processes is "know your client". It said this aligns with Which?'s views on "knowing your business customer" – where verification of business users and their paid-for content are verified before publication online – and places the burden of due diligence and identifying and mitigating risks around who to contract with on the businesses, thereby protecting consumers from unscrupulous providers in the supply chain.

PSA's assessment of inputs received

730. Respondents were generally supportive of our proposed DDRAC Standard and Requirements, and many agreed effective DDRAC is an essential regulatory safeguard to ensure consumers are protected from harms. We welcome this broad support.

731. However, we note a number of respondents did express concerns that some of the Requirements may

be overly onerous (especially in relation to the information requirements detailed in Annex 2 of the draft Code) and, in other cases, ambiguous and needed to be clarified. We address these points below.

Responsibilities for DDRAC relating to the value chain

732. A number of respondents raised concerns relating to potential new DDRAC Requirements which may result in organisations being held responsible for elements which are not within their control and, in particular, for third parties with whom they have no direct contractual relationship. We do not agree that this is the case under the draft Code, and that organisations would have downstream responsibilities with third parties with whom they have no direct contractual responsibilities. In such circumstances, DDRAC responsibilities relating to the third party would fall to the party directly contracting with that third party and not the upstream provider.

733. We also note concerns regarding draft Code paragraph 3.9.11 on the proposed Requirement that network operators and intermediary providers must take reasonable steps to satisfy themselves that any contracting party involved in the provision of a PRS meets the DDRAC Standard and Requirements. To be clear, we do not agree that this means that network operators and intermediary providers are responsible for potential Code breaches which happen downstream. This is about ensuring that any parties they directly contract with comply with their DDRAC obligations under the Code in relation to parties with whom they may directly contract.

734. We don't agree this is any way equivalent to being required to conduct DDRAC on downstream providers. In particular, in terms of risk assessment, we would highlight that draft Code paragraph 3.9.11 refers to taking "reasonable steps to satisfy" yourselves that any "contracting parties" meet the DDRAC Standards and Requirements. Taken as a whole, therefore, our view is that the draft Code is very clear in this respect, and sets clear limitations that network operators and intermediaries are only responsible for those areas that are within their control, they are not responsible for Code breaches which may happen downstream, involving third parties with whom they have no direct contractual relationships. Where such Code beaches occur, network operators and intermediaries will only be required to demonstrate that they have met the requirements set out in draft Code paragraph 3.9 in respect of the person they contract with.

Entering into contracts with third parties

735. We note that one provider commented that, in relation to draft Code paragraph 3.9.4, it is not within the PSA's powers to determine who a private organisation does or does not enter into a contract with. We don't agree that this is the purpose of DDRAC. It is about supporting PRS providers in their efforts to protect consumers from the risk of consumer harm in agreeing contractual relationships with third parties. As we explained in our consultation document, while many providers undertake DDRAC to a high standard, this is not always the case, and poor DDRAC can result in consumer harm and an unlevel playing field.

736. However, in reflecting on comments received, we have amended the wording of draft Code paragraph 3.9.4 to be clear that this Requirement only relates to contracts entered into in relation to PRS. We have, therefore, amended the wording of draft Code paragraph 3.9.4 to be clear that this Requirement is limited in this way.

Requirement to have for written DDRAC policies and procedures

737. We are also including network operators to the requirement to have DDRAC policies and procedures in place (draft Code paragraph 3.9.6). This was omitted in error and is already largely followed by network operators as part of their DDRAC responsibilities. We, therefore, do not consider that this will create an additional burden on network operators.

Personal liability of individuals involved in DDRAC

738. We have also considered comments about the proposed Requirements that all DDRAC policies and procedures (draft Code paragraph 3.9.6) and all DDRAC undertaken by organisations (draft Code paragraph 3.9.7), must be approved by a director or equivalent person, and what this means in terms of personal liability. We can confirm that it is not our intention that any individuals involved in DDRAC will be subject to personal liability. These requirements are to do with ensuring responsible senior individuals within organisations have full visibility and understanding of their organisation's DDRAC policies and procedures.

Application of DDRAC to app stores

739. We have also considered comments about DDRAC responsibilities and how this will apply in relation to app stores as well as concerns that draft Code paragraph 3.9.13 is likely to be unworkable for MNOs that are directly contracted with app stores that are merchant providers.

740. As already stated at paragraph 533 and 534 above, we intend to treat app stores and developers in the same way we do under Code 14. This includes retaining an exemption from registration, as is currently the case. We don't expect the new DDRAC Standard and Requirements will radically change the way in which providers (either network operators or intermediary providers) carry out DDRAC in relation to app developers and app stores under Code 15. Currently, app stores can be either the merchant (Level 2 provider) or intermediary (Level 1 provider). While it is the case that app developers are liable under the Code in terms of compliance where they are the merchant, it is the app store that is typically always the first port of call for resolving issues and which already performs, and would continue to perform, a critical role in supporting DDRAC Requirements, whether acting as the intermediary or the merchant.

741. On draft Code paragraph 3.9.13, this is a new provision which we are bringing into the Code from our unpublished, revised DDRAC guidance which we intended to publish last March. We consider this particular provision to be essentially a "for the avoidance of doubt" provision. It seeks to provide clarity that where network operators contract with intermediaries who also happen to be the merchant (currently level 2 provider), then the network operator is responsible for DDRAC in relation to that business in respect of all of its value chain activities. This is not to say, however, that where the business is an app store, the network operator is then responsible for conducting DDRAC in respect of all apps/games which are available through that app store. Our expectation is that they should have a good understanding of what checks, systems and processes contracted parties (including app stores) have in place to ensure that third-party services are unlikely to cause harm down the line. We do not see this as being a disproportionate requirement but, rather, something we would expect most network operators to be already doing in any event as part of their standard commercial DDRAC arrangements.

742. We will look to provide further clarity on this point in relation to our guidance consultation.

DDRAC annex

743. A number of comments were also made in relation to the information requirements listed in Annex 2 which relate to DDRAC information to be collected. Respondents were concerned that draft Code Annex 2 paragraph 2.3 and, in particular, draft Code Annex 2 paragraph 2.2.3(n) relating to the collection of data is overly comprehensive in certain areas such as for app stores and the providers of global products. We note these comments and will provide further clarity in terms of our expectations in our published guidance.

744. However, we also agree with the comments that draft Code Annex 2.2.3(n) may be onerous in terms of checking whether directors have been involved or connected with other companies that had previous findings, decisions and/or judgements. We have, therefore, amended the proposed wording to include a "reasonable endeavours" threshold.

745. Some respondents also considered that some of the data listed would not apply to SMEs/Sole Traders, albeit did not provide any specific examples as to what data they were referring to. Therefore, it is not clear which aspects of the proposed Requirements they are concerned about. We accept there may be instances where certain information simply does not exist and, therefore, cannot be collected. It is important to be clear, however, we only expect information to be collected to the extent that it exists and can be collected. We will provide further clarity on this through our published guidance.

SME limitations

746. In response to comments that small SMEs would not have the resource to maintain such a high level of DDRAC, it remains our view that the Standard, Requirements and Annex represent the minimum we would expect any good organisation to achieve in the normal course of good business. The Annex is written to be inclusive of providers of various sizes and status. We will provide further clarity through our published guidance.

Application of DDRAC Requirements to charities

747. We also note the comments in relation to double jeopardy and where organisations, such as charities, are regulated by multiple regulators. We do not agree with these comments and do not consider that any potential duplication or overlap in terms of regulatory requirements should be considered as an additional burden where organisations are active in different regulated sectors so long as any regulation is proportionate to the harms it is seeking to address in terms of individual markets.

Final decision

748. Having considered stakeholders' responses, we have decided to implement the proposals set out in relation to our proposed DDRAC Standard and Requirements (draft Code paragraph 3.9), as set out in our consultation document, with the following revisions:

- we have amended the wording at draft Code paragraph 3.9.4 to clarify that our intention here relates only to contracts relating to PRS and not non-PRS contracts
- we have amended the wording at draft Code paragraph 3.9.6 to add network operators to this Requirement which was omitted in error from the draft Code
- we have included a "reasonable endeavours" threshold to the wording of draft Code Annex 2 2.3 (n) relating to whether directors have been involved or connected with other companies that had previous findings, decisions and/or judgements.

Assessment framework

749. We have had regard to stakeholder comments made in relation to our assessment of our proposed new DDRAC Standard and Requirements against the general principles which we set out in the discussion document. A number of these we have addressed in responding to questions 29 and 30 above.

750. Having done so, we consider that our new DDRAC Standard and Requirements meets these tests, as we set out below:

- **effective** as they have been designed to add greater simplification, clarity and certainty by bringing all the key Requirements together within a single Standard. Our view is that this will be beneficial for parties both inside and outside of the value chain in terms of improving understanding and awareness of DDRAC Requirements and the information necessary to facilitate good DDRAC policies and processes. This helps not only those performing DDRAC obligations but also ensures those who are subject to DDRAC policies and processes understand what is necessary. We particularly note the following:
  - enhanced specific DDRAC Requirements are effective in protecting consumers from the risks of harm at the earliest point in a contractual relationship. It provides the contracting party with ample opportunity to assess the integrity of those they contract with and use the information established as a basis for ongoing checks throughout the lifetime of the relationship.
  - requirements to enable the passing up of information through the value chain strengthen oversight by reducing the blind spots that typically occur between network operators and merchants where one or more intermediaries enables the provision of service. This in turn provides a level of consumer protection - protecting consumers at the earliest stage should potential non-compliance be recognised.
  - requirements for network operators and intermediaries to contractually enable the option to suspend or terminate contracts (as appropriate) with those they contract with provides an efficient way to ensure that potential non-compliance can be addressed and controlled appropriately and in such a way that is pro-active and not reliant on subsequent regulatory intervention.
  - requirements for senior-level accountability/sign-off of DDRAC policies, processes and activities, ensures oversight that actions are being carried out to the satisfaction of the organisation as a whole, while also ensuring that failures to comply with DDRAC Requirements cannot be apportioned to transitional or junior staff.

- **balanced** as they represent in our view a fair balance between the requirements of fairness, effectiveness and efficiency, and the changes proposed in Code 15 are, among other things, objectively justified and proportionate measures that seek to address the relevant regulatory gaps and needs set out above. We note that some providers already have effective DDRAC processes whereas others do not, and that clarifying our expectations will help ensure that due diligence is carried out consistently to a high standard, including effective risk assessment and control processes. This will help in terms of creating a more level playing field as to how DDRAC is performed and also reduce the possibility of unscrupulous providers seeking to exploit weak DDRAC processes to enter the market.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular description of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

- **proportionate** as they should not disproportionately increase the burden on industry. The majority of changes being proposed should in fact have a positive impact on the regulatory burden across the industry, as we consider that they will benefit industry by ensuring clarity and consistency in the way DDRAC is carried out. We note that some providers already have effective DDRAC processes in place and, in these cases, we would expect any regulatory burden to be limited. Therefore, to the extent there is any additional regulatory burden, this would fall on those providers who currently follow poor DDRAC practices. Our assessment, therefore, is that our proposals will be an improvement on the existing Code and will provide for enhanced consumer protection, without unnecessarily increasing the regulatory burden on industry. This will benefit consumers but will also benefit industry by increasing consumer confidence in these services, and by enhancing its reputation.

- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above. In addition, the effects of the changes are clear on the face of the proposed new Standard. We consider therefore that the Code and this accompanying statement, clearly set out to industry the requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Systems Standard

Standard

All systems, including payment and consent verification platforms, used for the provision of and exit from PRS must be technically robust and secure.

Rationale

This Standard aims to ensure that payment platforms are operated to a high standard and consumers are not charged for phone-paid services without their informed and robust consent. The principle of consumer consent is essential to any business and is at the heart of our regulation. If service providers are able to charge consumers without clear, robust and verifiable consent in exchange for phone-paid services, then this is a serious concern, not only in terms of consumer protection, but also for the wider reputation of phone-paid services.

Background

751. Code 12 and subsequent editions, including Code 14, have all contained the following rule:

"Consumers must not be charged for PRS without their consent. Level 2 providers must be able to provide evidence which establishes that consent"[8].

752. There is also published guidance in place which sets out the PSA's expectations about how to meet the provision.

8 Under Code 14, this is set out at paragraph 2.3.3 under the Fairness Outcome.

753. In Part three of Code 14, there are several provisions which are relevant to the technical quality of systems and the oversight of risk posed by providers and/or services[9]. These Code provisions are relatively broad and lack detail in terms of clearly setting out our expectations on the steps which we consider are necessary to ensure that payment and verification platforms are technically sound such that they cannot be used to charge consumers without their consent.

754. We consulted on draft revised guidance on consent to charge and payment platform security in August 2019. Our review of the guidance was aimed at ensuring that Level 1 aggregator payment platforms are operated to high standards, that any consent platform weaknesses that could lead to consumer consent issues are addressed, and that providers ensure they have and can supply robust and auditable records of informed consumer consent for every charge to a phone bill.

755. We issued our statement and published updated guidance in February 2020 which provided:

- clear definitions of informed and robust consent and how this should be obtained
- the types of platform security measures that the PSA would expect providers to have in place
- recommendations and examples of the types of skills and experience that security staff working in this area should have.

756. To inform this revision of guidance we worked with MNOs and an independent security consultancy[10] to test the security of platforms. This testing resulted in detailed recommendations being made to MNOs for improving platform security as well as assisting the PSA in developing the guidance. The MNOs have continued to require annual penetration testing of their platforms.

Consultation proposals

757. We proposed to introduce a new Systems Standard. This new Standard incorporated many of the changes which we included in our updated guidance relating to consent to charge and payment platform security. These included the following:

- there must be one or more suitably qualified or experienced person(s) with overall responsibility for security and fraud (draft Code paragraph 3.10.1)
- intermediary providers must have a Single Point of Contact (SPoC) who acts as the point of contact for the PSA regarding systems issues and security (draft Code paragraph 3.10.2)
- all intermediary provider (except where they are providing voice-based services) must comply with the technical Standards set out at Annex 3 of the Code (draft Code paragraph 3.10.3)
- intermediary providers (except where they are providing voice-based services) must have their platform security-tested on an annual basis by a third party which appears on the NCSC Approved List (draft Code paragraph 3.10.4)
- all intermediary providers must act upon any security alerts or flags, whether received from their own monitoring or from information shared by others, in a timely manner (draft Code paragraph 3.10.5)
- network operators and intermediary providers must provide the results of all intermediary provider platform security tests to the PSA in accordance with any request made under the PSA's supervisory powers or any direction for information made under Code 15 (draft Code paragraph 3.10.7)
- network operators and intermediary providers must have contracts in place that allow them in appropriate circumstances to suspend or terminate their relationships with parties with whom they have entered into contracts with for the provision of phone-paid services (draft Code paragraphs 3.10.8 and 3.10.9)

9 These include paragraphs 3.1.1, 3.1.3, 3.1.6 and 3.1.7.

10 Specifically, we worked closely with Copper Horse who made specific recommendations to the providers of each of the platforms tested, as well as making general recommendations in the form of technical Standards and general best practice recommendations. Some of these recommendations were implemented through updated MNO Requirements, and others formed the basis of our revised published guidance.

- any evidence created and stored in relation to the Requirements for obtaining consent to charge must be independently auditable and provided to the PSA upon request (draft Code paragraph 3.10.10)
- where a phone-paid service provider engages any third party to undertake activities to obtain or verify consumer consent to charges on its behalf, it must require that third party by contract to supply the PSA with any relevant data or information upon request, to the extent permitted by law (draft Code paragraph 3.10.11)
- network operators must have in place contracts with intermediary providers which allow for the randomised testing of platforms, including third-party platforms, at any time (draft Code paragraph 3.10.12).

758. In addition, we proposed to include the following new Requirements:

- network operators must ensure that any platform security test results submitted to them are assessed by suitably qualified or experienced staff with the requisite technical expertise to analyse the results and make appropriate recommendations (draft Code paragraph 3.10.6)
- all network operators and intermediary providers must implement a coordinated vulnerability disclosure scheme[11] and act upon any issues reported (draft Code paragraph 3.10.13).

759. We asked the following questions:

Q31: Do you agree with our proposal to introduce a new Systems Standard? Please provide an explanation as to why you agree or disagree.

Q32: Do you agree with our assessment of the proposed new Systems Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

760. ***BT*** agreed with the objective of the Systems Standards but requested clarity that as a network operator, they were excluded from paragraph 3.10.7 of the draft Code since they are already compliant with Ofcom's TBEST scheme. It said that, at present, the type of information to be disclosed under draft Code paragraph 3.10.7 is only provided within the strict protocols and controls operated by Ofcom, Department for Culture, Media and Sport (DCMS) and the National Cyber Security Centre (NCSC). Information of this type is not shared more widely including with their customers as there is a risk this information could be leaked to third parties.

761. It requested further clarity on proposals at draft Code paragraph 3.10.13 in relation to a co-ordinated vulnerability disclosure scheme, the scope of the scheme and how it would operate. It confirmed it will be able to meet this requirement under its responsible disclosures policy found on its website. It added that it welcomes investigative work into security vulnerabilities carried out by well-intentioned and ethical security researchers which will help assess potential security risks in respect of their network, systems and services.

762. It also agreed with our assessment of the Systems Standard against the general principles but said that the requirement to share security test results should not extend to security tests on network operators.

763. ***VM02*** broadly agreed with the proposal to introduce a new Systems Standard. It said it has some concerns regarding our assessment of the new Systems Standard against the general principles.

Level 1 providers

764. ***Donr Ltd*** said it was satisfied with the intentions of a new Systems Standard. It suggested that, as written, there is a lot of emphasis on the intermediary and lack of a full 360-degree approach to

11 See glossary.

security. It said that MNO systems are generally below expectations and would benefit from a far more rigorous process of review and improvement. It also noted the PSA systems are open for abuse with a lack of secure transfer protocols for protected and personal data. It also questioned whether the focus on intermediary platforms is correct, and that the PSA should look to improve security across the whole ecosystem (including itself). It agreed with our assessment of the proposed new Systems Standard against the general principles.

765. ***Fonix*** agreed with our proposal to introduce a new Systems Standard. It noted there is already a requirement for Fonix to be security tested by an independent auditor and to submit a declaration to the MNOs based on their technical infrastructure and security. It also agreed with our assessment of the proposed new Systems Standard against the general principles.

766. ***Infomedia*** agreed with the Systems Standard. It noted that it appears to have deviated little from the current approach. It also commented on the concept of a vulnerability disclosure scheme (consultation document paragraph 379 (ii)), while it already subscribes to more wide-ranging international disclosure schemes, if the intention of this paragraph is to set up a scheme specifically for PRS, it suggested that the PSA is the most logical party to operate that scheme.

767. ***Mobile Commerce & Other Media Ltd*** did not agree and said the Requirements in this Standard do not take account of small merchants, who cannot afford to employ someone who is "suitably qualified" but instead use a platform(s) from a reputable provider. It also argued that the PSA providing notice of any updates by publishing them on its website no less than 30 days before any updated technical standards come into force is not sufficient time. It was concerned the PSA does not appear to have taken a balanced approach to this and had not considered current industry practice. It also noted on the technical standard in draft Code Annex 3.7 which requires the use HTTPS connections and said that the most commonly used type of connection is SMPP and that only one UK MNO requires the standard of HTTPS. It said that it appears that the PSA have not taken a balanced approach but come up with a standard and not considered what the industry are currently using.

Trade associations

768. ***aimm*** said that having systems which are technically fit for purpose are essential but felt that this work has largely been completed. It questioned whether there is a potential conflict of interest in relation to draft Code paragraph 3.10.7 which requires a network operator or intermediary provider to submit their platform security tests to the PSA. They asked what would be done with the submissions and questioned whether the PSA has the expertise to engage with the results and, if not, and there is an intention to do this in house, what additional costs to industry will there be for the PSA to recruit, train and manage such teams. It noted that if there is an intention to employ a third party to do this, which may be either be Copper Horse or another party, both will come at a cost to industry. It noted that if this was Copper Horse, then there is a chance that they will be auditing their own security test from that provider, which would clearly be a conflict of interest.

769. ***aimm*** also made the following comments relating to with our assessment of the Systems standard against the general principles:

- partially effective – it said in the absence of clarity, it wanted further information regarding the submission of security test results to the PSA. If they are to be audited by a third party, this could bring about a conflict of interest that might render this submission ineffective. If not, members seek assurance of the skill set at the PSA to conduct these checks.
- potentially balanced – it said, should the PSA be able to clarify the point above on audit of results, then this may be balanced.
- potentially unfair – it said there is a risk of conflict of interest as highlighted above, depending on who is assessing the results of the provided information.
- potentially proportionate – it said that it was proportionate, assuming the new Requirement added – relating to ensuring platform security test results being assessed by suitably qualified or experienced staff, and who will assess those results at the PSA is clarified.
- not yet transparent – it said the above points have yet to be transparently laid out.

770. ***Mobile UK*** said draft Code paragraph 3.10.13 requires network operators and intermediary providers to implement a coordinated vulnerability disclosure scheme and act upon any issues reported. It sought clarity to confirm the requirements of such a "disclosure scheme" and how this is intended to operate.

It also noted Code paragraph 3.10.7 requires that the results of intermediary platform security tests must be provided under section four or paragraph 6.1 of the draft Code. It wanted to confirm the requirement does not extend to network operators security tests, as such results would typically only be disclosed via jointly initiated regulated security activity and under strictly controlled parameters, e.g. Ofcom's TBEST scheme.

Charities

771. ***RSPCA*** and ***one other charity respondent*** agreed with our proposal to introduce a new Systems Standard. They also agreed with our assessment of the proposed new Systems Standard against the general principles.

Consumers and consumer advocates

772. ***CCP and ACOD*** welcomed our new proposed Systems Standard which they said would help in the fight against scams and help ensure that consumers are not charged for phone-paid services without their informed and robust consent.

773. ***PSCG*** agreed with our proposal to introduce a new Systems Standard but expressed concerns about its effectiveness. It said that since the introduction of MFA for subscription services, it had still seen several services where a fake PIN verification system was used to "subscribe" consumers to a service. It questioned whether the PSA have the technical capacity to monitor a multiplicity of such platforms and said it would make more sense for PIN verification to be carried out centrally by network operators.

774. It also agreed with our assessment of the proposed new Systems Standard against the general principles.

PSA's assessment of inputs received

775. Respondents were generally supportive of our proposed Systems Standard and agreed that systems which are technically fit for purpose are essential to ensure consumers are protected from harms. We welcome this broad support.

776. However, we note a number of respondents asked for more clarity in respect of our proposed new Systems Standard. We summarise these responses below.

Appointing suitably qualified or experienced person(s) with overall responsibility for security and fraud in respect of PRS

777. We received a number of comments relating to the cost implications for smaller merchants to employ someone that is suitably qualified or experienced with overall responsibility for security and fraud in respect of PRS (draft Code paragraph 3.10.1). It is important to be clear, however, that this Requirement only applies to network operators and intermediaries. We also note that this Requirement also is closely linked to draft Code paragraph 3.8.3 (b) of the Organisation and service information standard which has been amended to provide clarity that these Requirements do not apply to merchants, unless they are performing the role of an intermediary.

Compliance with the technical standards Requirements at Annex 3 of the draft Code

778. We also note comments about draft Code paragraph 3.10.3 which states that any amendment to the technical standards will be published no less than 30 days before any updated technical standards come into force. In particular, we note that respondents were concerned that this does not provide sufficient time for providers to implement the necessary changes. We have carefully considered these comments and do not agree. In particular, we note that 30 days is the minimum notice that would be provided by the PSA and that any changes to this would be subject to consultation and industry feedback. Also, the notice period would also take into account the feedback we receive in terms of the implementation period and, specifically, what is necessary and reasonable.

779. We have also noted the comments about the technical standard Requirement at draft Code Annex 3 3.7 and have decided that rather than specifying that an HTTPS connection is used we will instead require the connection to be "correctly validated and encrypted". We think this will be more straightforward to comply with, while retaining the purpose of the Requirement, which is to ensure that platforms used to provide PRS to consumers are robust and secure.

Provision of Intermediary provider platform security tests to the PSA

780. We note the comments raised in relation to draft Code paragraph 3.10.7 which requires network operators and intermediaries to provide intermediary platform security tests to the PSA. There were concerns raised about potential conflicts of interest, the cost of using third parties and the PSA's expertise to review the test submissions. We will work with industry in establishing an appropriate and effective approach to our consideration of platform security testing, including how we will avoid any potential conflicts of interest and how we will build on, and develop, our current internal expertise. In doing so, we will look to minimise any potential costs to the industry. We will be providing further details of our approach and processes in relation to platform security testing in our published Procedures.

781. We also note that another concern raised related to the extent to which this Requirement potentially conflicts with the existing Ofcom TBEST regime. We do not agree this is a valid concern since the wording is clear that this relates to intermediary provider platform security tests and so TBEST is not relevant here.

782. We also note the comment that the Systems Standard focuses primarily on intermediaries and whether this is correct. We think it is. It is typically the intermediary who acts as the host of the payment platform and facilitates the mechanics of the consent to charge and method of exit processes. In respect of platform security standards not being extended to MNO systems and platforms, this is because MNOs are subject to different standards and accountable to Ofcom.

783. In terms of comments about the integrity of the PSA's own system, we accept that the PSA, as a regulator, needs to ensure its systems and system security standards are robust and secure and fully adhere with relevant data protection requirements. In terms of comments about improving security controls across the whole ecosystem, we acknowledge the importance of our role and are working towards compliance with the internationally recognised information security management standard, ISO27001.

Coordinated vulnerability disclosure scheme

784. Respondents also sought clarity with regards to our proposal that network operators and intermediary providers must implement a coordinated vulnerability disclosure scheme. Clarity was sought on both the requirements of such a scheme and how this is intended to operate. We will be providing further clarity on this within our forthcoming guidance to give providers greater certainty as to what is expected. However, and to be clear, this is not a new initiative and is used in other contexts to ensure industry has in place processes that are capable of dealing with and handling disclosures about potential security vulnerabilities that could impact the industry and its customers. We note this was a recommendation from the Copper Horse report.

Final decision

785. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 3.10 on our proposed Systems Standard and Requirements with the following revision to draft Code Annex 3.7: replacing the reference to phone-paid transactions only occurring over "correctly validated HTTPS connections" to "correctly validated and encrypted connections".

Assessment framework

786. We have had regard to stakeholder comments made in relation to our assessment of our proposed new Systems Standard and Requirements against the general principles which we set out in the discussion document. A number of these we have addressed in responding to various responses to questions 31 and 32 above.

787. Having done so, we consider that our new Systems Standard and Requirements meets these tests, as we set out below:

- **effective** because bringing these provisions into the Code will benefit providers by providing additional clarity as to the necessary steps which must be taken to ensure that their payment and verification platforms are technically sound. Consumers should expect phone-paid payment mechanisms to be as technically robust as other payment mechanisms and in our view these changes will help to achieve this. We expect that this will result in the establishment of more secure technical and risk control procedures which will enable providers to demonstrate that

any records of charging cannot have been initiated in any other way than through the informed consent of consumers.

- **balanced** as they have been largely adapted from current published guidance under Code 14 which has only been recently consulted on. Accordingly, providers should be familiar with the concepts and expectations regarding consent to charge and payment platform security. Therefore, our view is that these changes represent a sensible balance between setting out clearly the circumstances in which, and the purposes for which, they apply; and the need to reflect the fast-moving and dynamic phone-paid services industry which delivers services across various different platforms.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular description of persons. The Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act, with one exception. The exception applies to those providing voice-based services who will not be required to comply with draft Code paragraphs 3.10.3 and 3.10.4 of the Code as it would be impractical for them to do so. The Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

- **proportionate** as they do not result in new burdens being placed on industry and are simply aimed at codifying our expectations which were contained in our recently updated guidance. We note that the MNOs have already updated their accreditation standards to include most of the recommendations made by Copper Horse[12]. We also note that our updated guidance on consent to charge and payment platform security carefully considered all inputs received, both through formal consultation responses and informal mechanisms (such as industry engagement). It also took account of the findings and recommendations from the Copper Horse report which, in our view, made a number of important, and necessary, recommendations. Moreover, the two new Requirements we have added – relating to ensuring platform security test results are assessed by suitably qualified or experienced staff, and that all network operators and intermediary providers must implement a coordinated vulnerability disclosure scheme – were both recommendations from the Copper Horse report.

- **transparent** as they clearly set out our expectations and the reasons for them are clearly explained above. In addition, the effects of the changes are clear on the face of the proposed new Standard. We consider therefore that the Code and this accompanying statement clearly set out to industry the requirements that will apply to them, including changes from Code 14, and do so in a transparent manner.

Service specific Requirements

788. We did not include a consultation question around our draft proposals for service specific requirements which are detailed in draft Code paragraph 3.11 but have received a number of comments about them which are dealt with in this section.

Stakeholder comments

Network operators

789. ***Virtual Talk Limited*** commented in relation to draft Code paragraph 3.15.4 regarding live entertainment services. It noted that the Requirement to retain recordings has been extended from 12 months to three years. It questioned the rationale for this and asked if it has been balanced against consumer privacy concerns. It said the existing requirement to hold recordings, while well intentioned, is in fact a disincentive to call for many consumers and infringes on the privacy expectations of the vast majority of callers, while providing minimal additional protection for those it is aimed to protect. It said the current trend is against corporates holding more than the minimum necessary personal data of consumers.

12 The recommendations from the Copper Horse report are discussed in our consultation on revised consent the charge guidance: Consultation on revised guidance on Consent to Charge 14 August 2019 ccc (psauthority.org.uk)

Broadcast

790. ***Global*** noted that draft Code paragraph 3.13.3 states that all valid responses should be included in the draw and given equal consideration. It argued this didn't account for delayed entries due to network latencies etc. It, therefore, suggested a minor edit to state "if they have been charged" at the end of the paragraph.

791. It also sought clarity as to where Code paragraph 3.13.4 (confirmation of entry) fitted with paragraph 3.2.12 (receipting) and whether the two provisions were exclusive or separate.

792. It also noted that regarding Code paragraph 3.13.5 (informing a customer if their entry is invalid) its experience was that this can actually increase consumer harm and anxiety as it causes confusion and anger (if for example their entry is invalid due to network issues, bars in place etc). Its policy is simple that if they don't receive a confirmation then they haven't been charged. It also noted that the implementation of this requirement could have an impact on its required level of skill, knowledge or judgement' as required by the Gambling Commission to run Prize Draws.

793. ***aimm*** noted some broadcast members asked for an amendment to draft Code paragraph 3.13.3 which states: "All valid responses for entry into a competition within a TV or radio programme that are sent in by consumers within the timeframe set out in the promotional material must be entered into the competition and given equal consideration". It noted that not all entries sent in are actually received and paid for, due to latency issues or other technological issues that can occur. As such, it asked that the words "sent in" are amended to something more accurate, such as "received and paid for".

794. It also commented on draft Code paragraph 3.13.5 relating to validity of competition entries which are sent outside of the times outlined in the promotion and must be considered invalid. It noted that the draft Code states that consumers who send such an entry must be informed that their entry is invalid and that they have not been entered into the competition but stated that this was not standard practice for all broadcasters and may cause consumer confusion and harm where it was not commonplace.

Charities

795. ***A charity respondent*** asked for clarification regarding the list at draft Code paragraph 3.13.2 detailing the information which a consumer must be clearly provided prior to entry. It noted that, presently it adheres to CAP/BCAP Codes in this area but the list at draft Code paragraph 3.13.2 appears to go beyond the requirements in these Codes. As CAP/BCAP already cover what needs to appear on marketing communications or other materials relating to promotions, it wondered whether confusion could be avoided if Code 15 only covers elements specific to PRS related points. It said that if this list at draft Code paragraph 3.13.2 remains unchanged, further clarification would be required as to the acceptable ways to provide these to consumers.

796. ***Macmillan Cancer Support*** agreed and said it is useful to have service-specific requirements for separate services particularly where vulnerability issues may arise. It did have concerns however that such an approach could end up unintentionally reverting back to a rules-based approach particularly as the PSA has said it will not be setting any new service-specific requirements based on "high-risk". It nonetheless noted that the PSA will consult on any additional service-specific requirements it wishes to include and give the industry an opportunity to comment on whether these are necessary (or covered adequately by the Standards). It also noted that that draft Code paragraph 3.11.1 states "Society Lottery Services must not be used by anyone under the age of 16 years." It wanted it noted that the DCMS raised a Review of the Gambling Act 2005 TOR and Call for Evidence (closing date 31 March 2021) reviewing the minimum age for society lotteries and whether this should be raised to 18.

PSA assessment of inputs

797. We note the comments in relation to draft Code paragraph 3.13.2 and that the requirements listed go beyond those within the CAP/BCAP Codes but also note that these Codes are voluntary so we do not think this provision should be amended.

798. In relation to the comments about draft Code paragraph 3.13.3 and late entries due to network latency issues, we have deliberately used "send" rather than "receive" because latency affects receipt of entries not the physical sending of entries. As long as an entry is sent in time, it should be counted even if it is not received in time due to network lag or other issues so we do not think a change is warranted. We are also not persuaded that a change is needed to draft Code paragraph 3.13.5 which also relates to when entries are sent, as opposed to received.

799. We have also considered comments about impacts on the required level of skill, knowledge or judgement as required by the Gambling Commission to run prize draws. We consider this comment seems to misunderstand the meaning of this Gambling Commission rule, as it relates to the game underlying the prize draw and not to the means of entry.

800. In respect of the comment in relation to the requirement to retain recordings at draft Code paragraph 3.15.4 this is not an extension and is a provision which has been in place via the live entertainment special conditions and has now been brought into the Code.

Final decision

801. Having considered stakeholders' comments, we have decided to implement the proposals in relation to service–specific Requirements (draft Code paragraphs 3.11).

6. Supervision

Introduction

802. In this section, we describe our new supervisory role, having taken account of stakeholder comments received during consultation.

Background

803. One of the primary objectives of Code 15 is to develop a new Code that will enable us to engage with industry in a more supervisory capacity, to place greater emphasis on prevention rather than cure.

804. We see supervision as involving ongoing oversight of phone-paid services and their providers to achieve and maintain compliance with the Code in order to prevent, or reduce, actual and potential harm to consumers and the market. We consider this oversight will be achieved through supporting and monitoring compliance with all the obligations set out in the Code. This will build on our recent changes to our regulatory stakeholder manager approach which we introduced in spring 2020. This was a deliberate strategic change in how we engage with industry stakeholders and was driven by a desire to be more co-ordinated, able to record engagement more consistently and have clear ownership of relationships and related actions.

Consultation proposals

General approach to supervision

805. We proposed to introduce a new broad power that enables us to undertake a range of supervisory activities for the purpose of monitoring compliance with Code 15.

806. In carrying out our supervisory activities, we said we will consider evidence, undertake analysis of information we receive and may use risk or other frameworks, to prioritise and support compliance with all of the obligations set out in the Code.

807. We proposed that our supervisory model would include the following types of activity:

- **proactive** – pre-emptive identification of harm through a review and assessment of providers and the services they offer
- **reactive** – dealing with issues that are emerging or have happened to prevent harm growing
- **thematic** – wider diagnostic or remedy work where there is actual or potential harm arising in relation to a number of providers and/or services.

808. In performing our supervisory activities, we also proposed to have regard to the following principles:

- **evidence-based judgement** – making supervisory judgements based on evidence and analysis and considering the appropriate course of action based on a clear assessment of regulated services or service types, individuals, organisations or industry sectors, including any risk posed
- **forward-looking** - in assessing any risk, we will consider the likelihood of any potential future consumer harm and the need for any early intervention to prevent such harm occurring
- **focused on risk of consumer harm** – we will apply greater focus on issues and providers that pose a greater risk of harm to consumers. To this end, the extent and frequency of supervision applied by us may increase in line with the risk of consumer harm or detriment posed.
- **co-operation** – we will work in an open and co-operative way when carrying out our supervisory activities. We will expect providers to co-operate and engage fully to enable effective supervision.

The purpose of supervision

809. We proposed to supervise by monitoring compliance with the Code to:

- assess levels of compliance with the Code by phone-paid service providers and/or particular sectors of the phone-paid services market

- enable the prompt identification of any actual or potential non-compliance with the Code
- proactively address any actual or potential non-compliance with the Code
- prevent or reduce the risk of actual or potential harm to consumers from non-compliance with the Code, and/or
- ensure that the PSA has sufficient information to take informed decisions enabling it to carry out its regulatory functions effectively.

810. We asked the following question:

Q33: Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

811. ***BT*** agreed in principle with the broad supervisory objectives outlined in the consultation document, although it said it would welcome greater clarity on the PSA's proposed "light-touch approach". It asked the PSA to issue an approach document for its supervision framework similar to that published by the FCA which should clearly explain how the PSA will supervise in practice; provide any risk or other frameworks which will be used for prioritisation and decision-making and set out the parameters for compliance monitoring and regular reporting.

812. ***Telecom2*** said the overall principle, of pre-emptive regulation, is a good one but the standard falls down on detail.

813. ***VMO2*** had some concerns regarding the proposed general approach to supervision. It noted the PSA's proposed new supervisory functions and, in particular the provision to carry out thematic reviews into technical matters relating to MNO systems. It said that it is unclear under what circumstances the PSA would appoint an individual to make the audit report in lieu of a nominated individual from the organisation submitting the report. It also said there are no indications whether the PSA reserve the right to decide whether it is one or the other or, whether it is if a suitable individual cannot be identified. It said where the PSA nominate an individual, it is unclear whether this provision effectively requires the PSA to contract expert witnesses for every thematic review. Dependent on the response, it did not think that this will meet the objective of being cost effective and proportionate. It said that from a fairness perspective, the individual would need to be agreed by both parties, particularly as the PRS provider would be directed to pay any "reasonable expenses incurred by the PSA in relation to an appointment made under paragraph 4.6.1(b)".

814. It said there is no clear framework or guidance as to what the PSA considers "reasonable" and whether the amount would not exceed a certain amount. It also said the PSA should indicate what triggers would instigate a thematic review and provide accompanying parameters and KPIs. It was concerned the thematic review monitoring method was very "broad brush" and lacked specificity and regulatory certainty. It said a clearer indication of what would prompt a thematic review and also a pre-arranged visit to the PRS providers' premises is necessary. It also said there is no indication of what the impacts are of failing to provide consent to the request to conducting a pre-arranged visit.

Level 1 providers

815. ***Donr Ltd*** agreed with our proposed general approach to supervision. It said, however, a clear distinction must be drawn between supervision and investigation - supervision should be co-operative, with agreed achievable timescales for providing information, agreeing to site visits etc. It said that as long as requests are reasonable, it supported the PSA in supervising PRS providers so that bad actors can be identified and prevented from causing consumer harm.

816. ***Fonix*** agreed with our proposed general approach to supervision.

817. ***Mobile Commerce & Other Media Ltd*** did not agree with our supervisory proposals. It said the PSA is a regulator and not a supervisor and these are different roles, and it was concerned we were abusing our power as a regulator to control the market more and more. It was concerned the supervisory elements of the Code are not transparent and proportionate.

818. ***One industry respondent*** said that it does not feel there is sufficient detail provided at this time to be able to comment in relation to this question.

Broadcasters

819. ***Global*** said it was, in general, supportive of our proposed general approach to supervision, although it believed that whereas in cases of engagement, supervision is necessary, in all other cases where the PSA is not engaged in action against a provider, "collaboration" is a better form to undertake this kind of intelligence and understanding of market players.

Trade associations

820. ***aimm*** agreed that a pre-emptive approach to regulation is a good idea but recognised that reactive regulation can also sometimes be necessary. It asked for much more clarity on what would trigger a thematic review. It was concerned that thematic reviews (based on the scarcity of the detail provided) could be onerous and problematic in terms of resource and would like to know what reasonable and justifiable KPIs would trigger a thematic review. It also expressed concern about draft Code paragraph 4.2.3 and sought clarity on who will be making those judgements including their qualifications and industry experience.

Charities

821. ***Macmillan Cancer Support*** had some questions and concerns about the PSA's proposed approach to supervision. It said it is not currently clear under what circumstances a proactive or reactive approach to supervision would be taken. It also said it is not clear what will trigger the supervision process, e.g. a complaint regarding a possible Code or guidance breach or evidence of such a breach?

822. ***RSPCA*** agreed with our proposed general approach to supervision.

823. ***Two charity respondents*** agreed with our proposed general approach to supervision.

Consumer and consumer advocates

824. ***PSCG*** agreed, in principle, with our proposed general approach to supervision but was concerned that the PSA would not have the resources to properly supervise the large number of disparate organisations involved in phone-paid services. It said there is a danger that the PSA may get bogged down in box ticking exercises while levels of complaints increase and that the PSA should be concentrating its resources on policing those elements of the industry which seek to use dubious means to extract unlawful payments from consumers.

PSA assessment of inputs received

825. Respondents broadly agreed with our proposed supervisory objectives which we outlined in the consultation document. Generally, it was felt that a greater focus on collaborative and pre-emptive regulation would have significant benefits. We welcome stakeholder support for our proposals in this area.

826. There were, however, a number of specific areas for which it was felt that additional clarity would be useful. These were as follows.

Clarity on approach

827. A number of respondents said they would welcome greater clarity in terms of our proposed approach to supervision. This included explaining some of the terminology used, such as "light-touch" and "reasonable" as well as further clarification relating to our proposed approach on audits, thematic reviews and skilled persons reports. We note that BT, in particular, said that we should issue an approach document which clearly explains how we will supervise in practice. We also note that VMO2 raised particular concerns about thematic reviews into technical matters relating to MNO systems. It said, dependent on the response, this will not meet the objective of being cost effective and proportionate. There were also a number of questions asked relating to triggers, particularly for how we would carry out thematic reviews.

828. We fully support these comments and intend to provide additional clarification of our planned

approach to supervision, including terminology used, through publishing Procedures related to supervision. This will provide more detail on our prioritisation and decision-making frameworks and set out the parameters (including triggers) for compliance monitoring and regular reporting. This will also provide more details in relation to audits, thematic reviews and skilled persons reports although we provide additional clarification to some of the issues raised in the compliance and monitoring methods section below.

Proportionality of supervisory framework

829. In responding to concerns raised about the proportionality of our proposed overall supervisory framework, we note that draft Code paragraph 4.3.1 has been developed within an overall framework of proportionality and that it specifically refers to the PSA undertaking information gathering where we consider such activities are "reasonable and proportionate" in order to achieve one or more of the purposes of compliance monitoring set out at draft Code paragraph 4.2.4. In addition, we also say at draft Code paragraph 4.2.3 that we will have regard to a number of principles when performing our supervisory activities, including evidence-based judgement, forward-looking, focused on risk of consumer harm and co-operation. In light of this, we consider that this provides a clear framework in terms of being able to properly target, and prioritise, our supervisory activities.

830. This also addresses a number of points raised in relation to resourcing impacts, as it means we can target our resources in the most effective and efficient way in taking forward our supervisory functions.

Final decision

831. Having considered stakeholders' comments, we have decided to implement the proposals in relation to our general approach to supervision (draft Code paragraph 4.2), as set out in our consultation document.

Compliance monitoring methods

832. We proposed that monitoring compliance with Code 15 would include information-gathering activities that are reasonable and proportionate. We said the ways in which we may look to gather information includes:

- **assessing complaints and other intelligence** - we currently receive intelligence about compliance issues from various sources, including from consumers, industry, the PSA's own monitoring and other regulators or public bodies. We propose that this will continue to form a critical part of how we monitor compliance with the Code.
- **audits** - for the purposes of supervision, we also propose to be able to require phone-paid service providers to submit an audit report annually or periodically as the PSA may specify. This may include the need for regulatory returns which may include workforce, staff employed, complaints and disputes, financial information, and the arrangements in place to ensure compliance.
- **the periodic reporting of data and information** - we want to be able to require information to be provided from a range of sources, to help us to understand the ongoing compliance of a regulated party, and any risks or issues and to be able to take a range of actions based on what that information is telling us. This relates to paragraph 4.5 of the draft Code in terms of reporting and notifications requirements.
- **targeted information-gathering** - we want to be able to have flexibility in terms of the information we require through careful targeting of particular information from individual providers, relating to compliance issues, including issuing directions for information in accordance with draft Code paragraph 6.1. This is intended to support our compliance monitoring aims as set out in draft Code paragraph 4.2.4.
- **thematic reviews** - if we suspect or become aware of an issue occurring in the market, we want to be able to obtain the information required to understand the issue and to enable us to take appropriate supervisory or regulatory action aimed at the relevant sector or part of the market.
- **skilled persons reports** - in certain defined circumstances, we may require a skilled persons report where providers may be required to undergo an independent review of their activities which are/or risk causing consumer detriment and agree to undertake any remedial actions that the report may require. This will be suitable for matters that require specific expertise, including (but not limited to) technical issues related to platform security and payment platforms.

- **engaging with PRS providers** - we may engage with providers where we consider it appropriate to do so to understand compliance issues and trends relating to phone-paid services, whether in relation to specific services or service types, or the market in general to inform decisions on appropriate action.
- **conducting pre-arranged visits (by consent) to the premises of PRS providers** - we do not propose to use this in a mandatory fashion but, rather, as a mutually beneficial process and an opportunity for us to give practical advice to providers on how to achieve compliance through an in-person review of a provider's business and processes.

833. We asked the following question:

Q34: Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

834. ***BT*** said it has no particular objections to the broad compliance monitoring methods proposed by the PSA under draft Code paragraph 4.3. However, it said it is unable to effectively assess each compliance method without further context in respect of the supervisory framework and the triggers and parameters relating to each method beyond those broadly drafted under the new Code.

835. ***Telecom2*** said it thought the monitoring methods and powers that PSA are seeking are more appropriate to other industries where the actual harm that has been caused far exceeds the potential harm from phone-paid services and as such are not justified. It said one specific concern is the thematic reviews as there is no detail on what would initiate them. It said it would like to see the KPIs that would do this. It also had concerns over the assessment of the reviews, and whether the person doing them would have the necessary qualifications and experience. It also noted that the PSA is proposing to use "skilled persons" and asked for more clarification on this. It also asked if, for whatever reason a provider does not consent to a visit, whether this would be held against them.

836. ***Vodafone*** said the supervisory proposal to introduce "thematic" reviews is disproportionate without the introduction of checks and balances similar to the limitations set out in S.137 of the Communications Act 2003 which sets the boundaries of Ofcom's information gathering powers. It called on the PSA to align its Code in this regard and to make a transparent framework available of the triggers that will lead to a thematic review. It said it has a related concern that the "skilled persons" carrying out such reviews must be competent in their field to return an accurate report however the PSA reserves the right to appoint their favoured party. It said members of the value chain should be able to agree with the PSA "skilled persons" from a published list of qualified providers and to an agreed set of PRS related boundaries. It also noted there are aspects of Vodafone's network activity which are highly sensitive and that it would not provide access to unqualified representatives or those lacking the necessary security clearance.

Level 1 providers

837. ***Donr Ltd*** said these monitoring activities would appear to be adequate. It also suggested long term relationships with a single point of contact would be beneficial, to give a clear picture of how the business is being operated and identify any changes.

838. ***Fonix*** agreed with our proposed compliance monitoring methods.

839. ***Infomedia*** said that it had two areas of concerns. First, it felt that the level of detail set out for intermediaries reporting complaints was disproportionate. As an intermediary, it said it does not manage or provide customer support services - this is the responsibility of service providers. While it can, and is happy to, provide the numbers of contacts per service, it does not retain the details of those contacts or the outcomes. It also felt that the skilled person reports did not appear to be linked to any particular matter of reasonable concern or risk, especially where the PSA is seeking a power to appoint any person they wish to do anything they like within a PRS providers' sensitive and confidential data, and then require providers to pay the costs of such reports.

840. It said its view was that this section must at least be predicated on:

- there being reasonable belief in wrongdoing or non-compliance for the PSA to be able to unilaterally appoint
- there must be actual wrongdoing or non-compliance found for the PSA to be able to charge the costs of the report to the provider
- those costs must be capped in some way
- the PSA must warrant the integrity of the report provider.

841. ***Mobile Commerce & Other Media Ltd*** did not agree with our supervisory proposals.

842. ***One industry respondent*** said that it does not feel there is sufficient detail provided at this time to be able to comment in relation to this question.

Trade associations

843. ***aimm*** said it is concerned that the suite of compliance monitoring methods gives the PSA powers that are disproportionate to the size of the market which they are regulating. It also questioned the definition of "skilled person" and sought clarity on how it will be determined what this level of skill should be and whether they themselves will be skilled enough to make this judgement.

844. ***FCS*** agreed with our proposed compliance monitoring methods.

845. ***Mobile UK*** commented on measures to request information and measures to inspect and assess levels of security. While it acknowledged that the PSA will conduct "targeted information-gathering", it said there are insufficient checks on when such requests can be made. It suggested adding the limitations set out in S.137 of the Communications Act 2003 (which sets boundaries on Ofcom's information gathering powers). It also had concerns about the PSA's ability (under draft Code paragraph 4.6.4) to appoint someone to carry out a skilled persons report. It said MNOs are regarded as critical national infrastructure and are in the process of acquiring significant obligations under the telecoms security requirements. These involve strict protocols about who and how network security is developed and maintained. It was concerned that the PSA's proposals will not be consistent with their enhanced responsibilities (allowing third parties to audit security can, of itself, introduce vulnerabilities). It said this aspect must be discussed further.

Charities

846. ***Chartered Institute for Fundraising*** noted that although its members supported improved compliance and monitoring in this area and believed that it will protect donors and consumers, it is unclear on its responsibilities. It asked that we provide clarification on the responsibilities of the charities and the responsibilities of its service providers.

847. ***Macmillan Cancer Support*** agreed in principle with the PSA taking a more proactive role in ensuring providers are compliant. However, it said it is not currently clear what the division of responsibilities should be between charities and their providers. It also noted that it is not clear from the consultation document how the "audit reports" and "skilled persons reports" proposals would work in practice. In terms of skilled persons reports, it said it would have concerns if it had to pay for an external auditor and it would like clarification as to whether internal auditors, with suitable qualifications, would be adequate.

848. ***RSPCA*** agreed with our proposed compliance monitoring methods.

849. ***Two charity respondents*** agreed with our proposed compliance monitoring methods.

Consumer and consumer advocates

850. ***PSCG*** said it did not feel that a "one size fits all" approach to supervision is desirable and wanted the PSA to concentrate its resources on the service providers and service types generating the most complaints.

PSA's assessment of inputs received

Compliance monitoring methods

851. We note there was a mixed response, both from respondents and from attendees at our industry webinars, in terms of our proposed compliance monitoring methods. A number of respondents supported our proposals in this area and agreed that improved compliance and monitoring would lead to improved consumer protection. However, some respondents did not support our proposals; this was for different reasons. In particular, a number of respondents felt that there was insufficient detail provided in respect of the supervisory framework and the triggers and parameters relating to each proposed method. Specific concerns were raised in relation to thematic reviews and skilled persons reports and, in particular, the lack of detail as to how these would be initiated.

852. In responding to these comments, we consider that the draft Code is very clear in terms of the different ways in which we propose to gather information. As set out above, we note respondents' comments requesting further clarification to our planned approach to supervision. We agree with these comments, and we intend to provide both transparency and clarification relating to our planned procedures through publishing our supporting Procedures before the new Code comes into force. As above, this will cover our prioritisation and decision-making frameworks, and set out the parameters for compliance monitoring and regular reporting.

Thematic reviews

853. There were particular concerns relating to thematic reviews. Again, we will look to provide additional clarification in terms of how these will be initiated through our published Procedures. We note that we do say at draft Code paragraph 4.3.1(e) that thematic reviews is something we may do "where [we] have reason to believe there may be common or pervasive issues regarding compliance with Standards, Requirements and/or other obligation of the Code". We consider this provides clarity as to how we intend to use thematic reviews.

854. In looking to provide additional clarity on thematic reviews, we would also note sometimes we may receive information, including complaints, that suggests there is an industry wide issue causing harm to the interests of citizens and consumers. In such cases, we may use consumer research, mystery shopping or detailed analysis of complaints to determine on which business(es), if any, we should focus our resources. However, it may not always be possible to prioritise our work effectively without further information from those we regulate and, in such cases, we may open a thematic review and use our information gathering powers to gather further evidence from relevant businesses in order to determine where the problem lies, and the appropriate response to tackle the harm. It is important to note that we will have flexibility in terms of how we target our limited resources, and that all of this will be subject to the tests of proportionality, as we explain in paragraphs 828 and 829 above.

Skilled persons reports

855. Similarly, in respect of skilled persons reports, we say at draft Code paragraph 4.6.1 that this method is likely to be "suitable for matters that require specific expertise, including but not limited to) technical issues related to platform security and payment platforms". We note that a number of stakeholders have asked for further clarification relating to how this will work in practice, and we intend to provide both transparency and clarification as to how we see this working through our published Procedures. To be clear, though, we intend that our approach will be highly collaborative in terms of how this will work, engaging with relevant providers and agreeing on a solution that works for all parties, with a particular focus on keeping costs down. This is an area we will look to work with providers in developing the most effective and efficient model to achieve our aims.

Proportionality of supervisory framework

856. We note that a number of stakeholders raised concerns relating to the proportionality of the overall supervisory framework. We have already addressed these concerns in paragraphs 828 and 829 above.

857. We have also considered Mobile UK's and Vodafone's concern about there being insufficient checks when requests for information can be made, such as where the PSA carries out thematic reviews. They both suggested adding the limitations set out in S.137 of the Communications Act 2003 (which sets boundaries on Ofcom's information gathering powers). We do not agree that this is necessary or appropriate and we consider that the Code already includes sufficient controls to ensure we use our

powers appropriately, giving reasons and providing due notice. In particular, we note that our powers in this regard, including our proposed formal information gathering powers, are subject to various safeguards (as set out in paragraph 6.1.1 of the Code). Also, to be clear, our intention is not to engage in fishing expeditions but rather, simply, to use these powers in a targeted fashion, both in terms of providers and services in respect of which we may wish to engage.

858. In response to concerns raised by charities, and how our proposed new supervisory powers will apply to them, to the extent they are a PRS provider, it is important to be clear they would be in scope of our new supervisory powers. However, as explained at paragraph 829 above, we would look to apply our supervisory powers in a targeted way, taking account of the requirements of proportionality and reasonableness and the principles set out at draft Code paragraph 4.2.3.

Final decision

859. Having considered stakeholders' comments, we have decided to implement the proposals in relation to our compliance monitoring methods and use of audits and skilled persons reports as part of our supervisory activities (draft Code paragraphs 4.3, 4.4 and 4.6), as set out in our consultation document.

Reporting and notification requirements

860. To support our supervision function, we proposed to require relevant providers to periodically report data and information. We proposed to set out in our published Procedures a non-exhaustive range of data and information that the PSA may require in such periodic reports and notifications. We set out in the consultation document the types of information we may require.

861. We asked the following question:

Q35: Do you agree with our proposals on reporting and notification requirements? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

862. ***BT*** said it is broadly supportive of the PSA's stated intention of gathering suitable information to assess the PRS market and value chain in support of the newly-proposed supervision model. However, it said it is difficult to assess the PSA's proposals on reporting and notification where it has not specified the scope, frequency and methodology for these proposals. It agreed that suitable mechanics should be in place regarding complaints reporting and notification to the PSA of serious issues such as security or data breaches. It welcomed the PSA's intention to consult further on this matter and obtain agreement with industry in respect of proportionate reporting and notification requirements. It said any reporting information should be gathered in a uniform and accessible format to allow comparative industry analysis and notification requirements should be unambiguous, so all providers meet their disclosure responsibilities in a consistent manner.

863. ***Telecom2*** said in principle it agrees with the standard and the information being sought but much will depend on the level of detail and the timescales, together with the provider's ability to produce the information.

864. ***VMO2*** agreed somewhat with the proposal on reporting and notification requirements but had some concerns on the practicalities and potential burden it could impose on them.

Level 1 providers

865. ***Donr Ltd*** said it was happy with the reporting requirements for intermediaries. It said this is reported quarterly rather than monthly and noted that other regulators (FCA, Gambling Commission and the Charity Commission) require annual reports. Four quarterly reports a year is a significant improvement on current reporting threshold and would not be considered to be a burden.

866. ***Fonix*** agreed with our proposals on reporting and notification requirements.

867. ***Infomedia*** referred to its comments made in relation to Q34 (see paragraph 838).

868. ***Mobile Commerce & Other Media Ltd*** did not agree with our supervisory proposals.

869. ***One industry respondent*** said this was an example of where clarity can be given to ensure consistency of approach throughout the industry

Trade associations

870. ***aimm*** said its members would like to see an audit template to ensure that they are fulfilling the obligations which they are to be audited against. It said members also asked for clarity on the threshold for triggering an audit, and if there are varying levels of satisfaction with the audit results that would result in differing levels of repeat audits being required. Members also asked for clarity on who at the PSA will be assessing the results of any audit that is required, including their qualification and industry experience. It noted that one network operator member had pointed out that they work in very different ways, with very different systems and sometimes different language, so it may not be technically possible to set them up to capture all of the information that the PSA may require.

871. ***Mobile UK*** commented on draft Code paragraph 4.5.1 which it said contains wide drafting requiring a PRS provider to report on a range of data and information that the PSA may require periodic reports on. It sought confirmation that there is flexibility drafted into this paragraph to allow for the different systems and varying levels of reports/data available.

Charities

872. ***Macmillan Cancer Support*** agreed with our proposals on reporting and notification requirements and acknowledged that this will give the PSA greater oversight over the organisations that are registered with them. However, it said it would be useful if the PSA could clarify how frequently organisations will be required to supply the information and in what format.

873. ***RSPCA*** agreed with our proposals on reporting and notification requirements.

874. ***One charity respondent*** said it would welcome more detail to ensure effective implementation which might otherwise be compromised with the current level of detail.

875. ***Another charity respondent*** agreed, in principle, with our proposals on reporting and notification requirements.

Consumer and consumer advocates

876. ***PSCG*** agreed with our proposals on reporting and notification requirements and that the PSA need to have powers to request data which assists them in their regulatory role and also data which assists investigations. It said it would like to see periodic reporting extended to the MNOs as they are usually the first port of call when consumers have an issue and that MNOs should log these contacts as a fundamental part of their ongoing DDRAC.

PSA's assessment of inputs received

877. Respondents were broadly supportive of our proposals on reporting and notification requirements, and it was generally acknowledged that this will give the PSA greater oversight of organisations and services which are active in this sector. We welcome this support.

Clarity on reporting and notification

878. We note that some providers asked for further clarity on reporting and notification, particularly relating to the scope, frequency and methodology for these proposals. We agree with these comments and, as set out in the consultation document, we intend to set out in our published Procedures a non-exhaustive range of data and information that we may require in such periodic reports and notifications. However, and in response to concerns about draft Code paragraph 4.5.1 and its broad scope, we can confirm that that we will look to introduce sufficient flexibility to allow for the different systems and varying levels of reports/data available. We will work with relevant stakeholders to develop our thinking on this.

879. In respect of comments on ensuring proportionate reporting and notification requirements, we support these comments. We agree that any reporting information should be gathered in the most uniform and accessible format as possible to allow the PSA to be able to compare industry analysis and data, in the most consistent (and efficient) way. Our approach is intended to be collaborative in this area, engaging individually with relevant providers, to gather data in a way that meets our aims and in the most efficient way for the provider, taking account of their current reporting systems and processes.

Audits

880. A number of respondents also asked questions in relation to audits, and clarity on the threshold for triggering an audit. As we have already said, this is an area we intend to provide additional clarity in relation to our approach in our published Procedures. Again, it is important to note that we will have flexibility in terms of how we target our limited resources in this area, and that all of this will be subject to the tests of proportionality, as we explain in paragraph 829 above.

Final decision

881. Having considered stakeholders' comments, we have decided to implement the proposals in relation to reporting and notification requirements (draft Code paragraph 4.5), as set out in our consultation document.

Assessment framework

882. We said in our consultation document that we provisionally considered our proposed new approach to supervision meets the tests which we set out in the discussion document, namely that they are: effective, balanced, fair and non-discriminatory, proportionate and transparent.

883. We asked the following question:

Q36: Do you agree with our assessment of our proposed new supervisory function against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

884. ***BT*** said it is unable to fully respond to this question without further discussion with the PSA in respect of the proposed approach, triggers and procedures.

885. ***Telecom2*** said that the proposals have potential to be effective but there are several key areas where there is insufficient information to be able to judge. It said that the proposals are potentially balanced but there is insufficient detail around many aspects of them, including reviews and audits. It agreed the proposals were fair and non-discriminatory but felt that they may disproportionately increase the burden on industry, but the level of detail provided did not allow it to make an informed view. It also said that it was not transparent as the level of detail in the expectations is not clear in relation to the proposed new supervision functions.

Level 1 providers

886. ***Donr Ltd*** and ***Fonix*** agreed with our assessment of our proposed new supervisory function against the general principles.

887. ***Infomedia*** agreed with our assessment of our proposed new supervisory function against the general principles save for its response to Q35 above.

888. ***One industry respondent*** said that it does not feel there is sufficient detail provided at this time to be able to comment.

Trade associations

889. ***aimm*** made the following comments said that in relation to our assessment of our proposed new supervisory powers against the general principles:

- potentially effective - it noted a collaborative engagement with industry, who can provide education and expertise to the regulator which is a good thing. However, it thought the level of detail provided was too scarce to be able to judge if this will be the case.
- potentially unbalanced - it said the level of detail around the compliance monitoring tools proposed is too scant and that clarity on thematic reviews and their contents, including the

KPIs that will trigger a thematic review, are needed. It also said clarity is needed on reporting and notification requirements and their contents, including the KPIs that will trigger reporting and notification.

- potentially unfair and discriminatory - it said there no evidence of what "reasonable" test the PSA will perform on these judgements, audits and reporting requirements, or any detail on the level of skill or qualification of those who will be making them.
- disproportionate - it said this may disproportionately increase the burden on industry, however the level of detail provided does not allow it to make an informed view. Again, it said further clarity is required. It did not deny that these may be very useful safeguards for industry, however, it is fearful that these powers have the potential to be used disproportionately against those in industry trying to do good, and not just for those "bad apples" who are unlikely to co-operate with the PSA anyway.
- not transparent - it noted the level of detail in the expectations is not clear in relation to the proposed new supervision functions.

Charities

890. ***RSPCA*** and ***one other charity*** respondent agreed with our assessment of our proposed new supervisory function against the general principles.

Consumers and consumer advocates

891. ***PSCG*** agreed with our assessment of our proposed new supervisory function against the general principles.

PSA's assessment of inputs received and final decision

892. We have had regard to stakeholder comments made in relation to our assessment of our proposed new supervisory function against the general principles which we set out in the discussion document. We have addressed these in responding to various stakeholder responses to questions 33 to 35 above.

893. Having done so, we consider that our new approach to supervision meets these tests, as we set out below:

- **effective** as they are a key element of our new preventative approach. We believe this is a necessary shift if our regulation is to remain fit for purpose and capable of effectively regulating today's market. Through these changes, we will be able to engage more proactively with industry, including having greater insight and intelligence in relation to providers' compliance strategies, and this will help prevent harm occurring. This will ensure consumers are protected from harm, leading to improved consumer trust and confidence in the market and support the growth of phone-paid services.
- **balanced** as they will enable us to have a more comprehensive understanding of providers of phone-paid services and the services that are offered to consumers. This will help us better protect consumers as we will be better able to take proactive regulatory action that is proportionate, efficient, timely, targeted and effective. We consider that this will support ongoing compliance monitoring with Code 15 and enable us to prevent, reduce or otherwise effectively respond to actual or potential harm to consumers.

  We also note that verification and supervision is something that larger firms who operate in other markets are used to, and that this approach is consistent with regulatory approaches adopted by other regulators, including the FCA and the Pensions Regulator.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. Specifically, we note that our new supervision regime will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate sector, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

- **proportionate** as they will not disproportionately increase the burden on industry. Indeed, the majority of changes should positively impact on the regulatory burden as they are designed to deal with compliance concerns earlier and more speedily, and without moving to formal enforcement. This should, therefore, reduce the potential for costs and other resources for both industry and the PSA. In addition, the proposals include a number of safeguards for industry including advance written notification and provision of reasons and proportionality considerations where certain compliance methods are used.
- **transparent** as our expectations are clear in relation to the new supervision function and the reasons for them are clearly explained above. In addition, the effect of the changes are clear on the face of the provision set out in Section 4 of Code 15. We consider therefore that the Code and this accompanying statement, clearly set out to industry the requirements that will apply to them, including changes from the Code 14, and do so in a transparent manner.

7. Engagement and enforcement (including additional powers, responsibilities and obligations)

Introduction

894. In this section, we describe our approach to engagement and enforcement (section 5 of the Code) and additional powers, responsibilities, and obligations (section 6 of the Code), having taken account of stakeholder comments received during consultation.

Background

895. The central objective of the regulation of phone-paid services is to protect consumers from the harm that may arise from their use of such services. In pursuing this objective, our overarching principles with regards to enforcement are that:

- enforcement processes are effective and capable of producing proportionate, consistent and fair outcomes, and are clearly understood by industry
- parties associated with services under investigation must fully co-operate with us, including complying with requests for information
- regulated parties must comply with all sanctions imposed by us.

896. Under Code 14, investigations, procedures and sanctions are dealt with in Part four. This part of the Code was the primary focus of our review of Code 13 in 2015, leading to the introduction of Code 14. The key changes from this review were:

- bringing forward the consideration of interim measures, i.e., withholds and/or suspensions to an earlier stage in all Track 2 investigations. This removed the need for the emergency procedure, which existed under Code 12 and 13 but which was abolished by Code 14.
- replacement of the Code Compliance Panel (CCP) with a new body, the Code Adjudication Panel (CAP), which no longer contained members of the PSA Board. This provided a separation between those involved in making the Code, the PSA Board, and those who enforce it.
- an internal mechanism to review the recommendations of the Investigations team before breaches and sanctions are outlined to the provider in a warning notice
- enhanced potential for providers to settle cases once they have received the warning notice, and prior to a hearing
- a more flexible hearing, which allowed for different levels of oral and legal representation
- a more streamlined, simplified process which significantly reduced the complexity of the existing Part four by removing post adjudication reviews and the Independent Appeals Body (IAB) stage.

Consultation proposals

897. We proposed the following key changes to our enforcement powers and procedures:

- a new approach to engagement and enforcement
- an enhanced settlement process
- strengthening the existing interim measures regime
- a more efficient adjudicative regime
- strengthening the test for prohibiting individuals
- strengthening and expanding our information gathering powers.

898. This was as follows:

Engagement and enforcement

New approach to engagement and enforcement

899. We proposed to move away from the current model of Track 1 and Track 2 procedures to a new structure which is based on enquiry letters, warning letters and formal notification and enforcement notices. Our provisional view was that this would provide a much clearer overall structure of the engagement and enforcement routes open to us and provide both us and industry with a clearer framework around informal resolution which currently sits outside Code 14.

900. The key changes we proposed were as follows:

A clearer framework around informal resolution

901. Under our proposed new enforcement structure, we said we want to bring our informal resolution framework within scope of Code 15, through the use of enquiry letters and warning letters.

902. Although, we noted it was currently open to us to engage with industry informally, we considered it would be beneficial to have clarity within the draft Code and/or any published Procedures regarding the use of informal engagement/resolution tools to help ensure that such communications are given due consideration and weight by the industry. We considered that this would provide us with more flexibility in how we deal with any compliance concerns and allow the opportunity for more cases to be dealt with through informal resolution rather than formal enforcement action.

A more flexible engagement and enforcement framework

903. We proposed that, where corrective action is required, through a warning letter, and before issues go to the formal notification stage, we may specify the action to be taken in the form of an action plan to be agreed with the provider. An action plan will specify a set of actions which we consider are necessary to remedy the breach and prevent any repetition, together with a deadline for implementation. We also proposed that we may publish warning letters (including action plans) where we considered it would be necessary and proportionate to do so to prevent or reduce potential or actual harm to consumers.

904. Our provisional view was the proposed action plans would have the following benefits:

- they can be used more flexibly, including where clear evidence of breaches exists without the need for further investigation
- they can be proposed/agreed at an earlier stage than is currently the case – including agreement as to issuing refunds
- we are able to be much clearer upfront in terms of the consequences of non-compliance with action plans (i.e. proceeding to enforcement)
- the more flexible use of action plans could be effective with a co-operative provider and where swiftly agreeing remedial steps and obtaining refunds for consumers is a priority (rather than the imposition of a broader suite of available sanctions).

Broadening the circumstances under which a formal notification can be issued

905. We proposed to notify relevant parties in writing (through formal notification) much earlier in the process that a case or matter is now at a point which could lead to an enforcement notice and determination by a Tribunal or a legally qualified CAP member. In particular, we proposed that formal notifications could be issued following either engagement with the provider, for example where the recommended corrective action has not been taken, or without the need for prior engagement. In either case this would be where an issue is sufficiently serious to warrant enforcement action.

906. Following receipt of a formal notification, the relevant party will then have an opportunity to provide us with any information it considers relevant to the case or matter. Once we have concluded our further enquiries and investigations, we will then notify the relevant party of our conclusions in writing in the form of an enforcement notice where we still consider that a Tribunal or a legally qualified CAP member determination is necessary. The proposed enforcement notice will be broadly similar to the warning notice under Code 14 and will contain similar information. The relevant party will then have an

opportunity to respond to the enforcement notice before the case or matter is placed before a Tribunal or a legally qualified CAP member to determine.

907. We asked the following question:

Q37: Do you agree with our proposed approach on engagement and enforcement? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

908. ***BT*** agreed that our proposed new approach to enforcement is likely to result in a more effective process. It said it is supportive of changes, such as the codification of an informal resolution framework, designed to make detection and resolution of regulatory breaches simpler and quicker.

909. However, it thought there are some simple additional actions that the PSA can take to drive further efficiencies such as revising its supporting Procedures to better outline the investigatory "lifecycle". It considered, for example, that there is value in the PSA sharing preliminary findings in respect of formal investigations at an earlier juncture within the process allowing for quicker remediation and resolution. It also considered the PSA could consider, similar to the ASA, a mechanic for informally resolving breaches of a less serious nature without publication of a forensic analysis of the facts to discourage adversarial interactions and incentivise proactive engagement and cooperation.

910. It also noted the PSA plans to publish updated Procedures which will cover the updated investigations process, and it said it sees benefit in consulting with industry to ensure a fit for purpose document.

911. ***Telecom2*** said it would welcome any improvements to engagement and noted that, currently, they do not feel there is any collaborative engagement when dealing with complaints and any subsequent investigations. It said action plans are a good idea but they must be formulated in collaboration with the provider and not imposed. It also said it would welcome timescales for the various parts of the enforcement process and for the PSA to be accountable for their deadlines as providers are now.

912. ***VMO2*** agreed with the proposed approach on engagement and enforcement, welcoming a more timely and effective process.

Level 1 providers

913. ***Donr Ltd*** said the key with this is for cases and actions to be brought quickly and in a cost-effective manner. It argued that the PSA should move to more effective deterrents like prevention of harm through active relationships. It noted that timescales would be helpful. It also noted there are no risk reviews, e.g. if enforcement is understaffed, could a backlog build, causing harm to the industry reputation.

914. ***Fonix*** agreed with our proposed approach on engagement and enforcement.

915. ***Infomedia*** was supportive of the enquiry letter approach. It noted, however, that it is slightly unclear how the warning letter process will operate with the action plan process - while both are welcome, it said it would be good to understand which would come first.

916. ***Mobile Commercial & Other Media Ltd*** said the draft Code does not include any timescales for the PSA to comply with while dealing with any engagement or enforcement action and that for effective engagement and enforcement to work, the PSA has to be willing to work to some sort of service level agreement. It also expressed concern about draft Code paragraph 5.1.8 which states that the PSA may at any time reconsider a case or matter in respect of which it has previously decided not to take further action. It said this requirement is wholly unreasonable and unfair on those the PSA regulate.

917. ***One industry respondent*** believed that strong engagement with and from the PSA is critical for a healthy industry. It said if the approach being proposed leads to that then it agrees with it but at this time the proposal is not sufficiently clear. It also noted there is a lack of specific and measurable commitment from the PSA.

Broadcasters

918. ***Global*** said that, among setting requirements on providers to respond to engagement enquiry letters, the PSA must also set out the requirements on themselves to maintain contact with the engaged provider throughout the course of the engagement and to let the provider know once it has concluded its engagement.

Charities

919. ***Macmillan Cancer Support*** said it is not clear whether the enquiry/warning letter system will be triggered by breaches of the guidance or the Code. It also said it is unclear what might trigger the provision of an "action plan" as opposed to the warning letter/formal notification process. It said it is also unclear when warning letters might be published - the consultation document just says, "where we would consider it proportionate or necessary to do so". It asked for some clarity on these points.

920. ***RSPCA*** and ***two other charity respondents*** agreed with our proposed approach on engagement and enforcement.

Trade associations

921. ***aimm*** said engagement is a key issue for its members and that despite having account managers, there is a feeling that, currently, the PSA has little interest in engaging with industry. It said if the proposed approach sees a positive increase in collaborative engagement, then this would generally be seen as a good thing but it is concerned that the proposals are focused more on enforcement than engagement. It also said there seems to be little interest from the PSA in holding themselves to account for better, and timelier, performance and asked that timescales and a process template is developed.

Consumers and consumer advocates

922. ***PSCG*** agreed with our proposed approach on engagement and enforcement and welcomed the intention to speed up investigations and to increase transparency where breaches of the Code have been identified.

PSA's assessment of inputs received

923. Respondents were broadly supportive of our proposed approach on engagement and enforcement on the basis it should lead to a more effective and timely process. We welcome stakeholder support for these proposals which we consider will lead to strengthened collaborative engagement and cases and actions being able to be dealt with more quickly and in a cost-effective manner.

924. A number of respondents and webinar attendees said there is a lack of specific and measurable commitment from the PSA, particularly in terms of the length of time we expect to take in our engagement and enforcement actions and how we engage with the parties at various stages of the enforcement process. We have considered these responses carefully. We are committed to following transparent enforcement processes. This is an important objective of Code 15. We want to ensure the best possible balance between providing increased transparency about how we enforce with ensuring that our investigations are carried out in a fair, efficient and timely way. In line with this, we will always aim to complete our engagement and enforcement activities as quickly as reasonably possible given the circumstances of the particular case. However, we remain of the view that transparency on timings is better dealt with as part of our published Procedures rather than the Code itself.

925. One respondent expressed concern about draft Code paragraph 5.1.8 on the PSA being able to reconsider a case or matter in respect of which it has previously decided not to take further action. We do not agree that this is unreasonable. It is important that, where we have decided not to take any further action in respect of particular cases, and we later become aware of further issues relating to the same or a similar issue, that we are able to reconsider our previous decisions on such matters at any time. This is no different to the position adopted by other regulators[13].

926. We also note some respondents made a number of detailed comments which we consider are more relevant to our published Procedures rather than the Code itself. These include requests to outline

13 See paragraph 2.25 of Ofcom's enforcement guidelines, Enforcement guidelines for regulatory investigations, published on 28 June 2017: Enforcement guidelines for regulatory investigations (ofcom.org.uk)

the investigatory "lifecycle" in our procedures, whether there is value in sharing preliminary findings in respect of formal investigations at an earlier stage, considering a mechanic for informally resolving breaches of a less serious nature without publication of a forensic analysis and providing clarity in terms of the relationship between the warning letter process and the action plan process. We welcome these comments and will feed them into our work in developing our published Procedures and ensuring further transparency and clarity through these.

Final decision

927. Having considered stakeholders' comments, we have decided to implement the proposals in relation to our approach on engagement and enforcement (draft Code paragraphs 5.1 to 5.4), as set out in our consultation document.

Enhanced settlement process

928. We said we want to create an enhanced settlement process for the paper-based route that provides much clearer and more quantifiable incentives for early settlement. In particular, we proposed the following:

- to allow settlement as a potential option earlier in the lifecycle of the investigation (once the case has reached the enforcement notice stage)
- once an investigation is sufficiently advanced, the ability to communicate preliminary findings and preliminary sanctions recommendations to providers and to invite settlement discussions on that basis
- to provide a defined system of settlement discounts, namely a percentage discount for fines in the event of settlement.

929. We considered that these proposals would provide enhanced clarity and visibility regarding the benefits of settlement. It was also anticipated that moving to a defined percentage discount may serve as a greater incentive to settlement through the paper-based route. We envisage that any discount would need to be applied after the removal of the financial benefit (to ensure that providers are unable to profit from any non-compliant actions).

930. We also anticipated that any discount would be on a sliding scale from 30% to 10%. The earlier the settlement, the greater the discount available, as the resource savings we could achieve would be greater. We noted this approach was consistent with other regulators' approaches to settlement, including Ofcom.

931. We asked the following question:

Q38: Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

932. ***BT*** agreed with the approach to settlement which it said is consistent with the approach used by Ofcom. It said that where a party admits to breaches, the proposal to follow a more streamlined enforcement process is wholly positive and will result in a more efficient use of resource for both the PSA and the provider subject to investigation. It said it is also positive that settlement can now be used at the earlier stage of the investigation process, and not confined to the later warning notice stage in the current Code. It further supported the use of discounted fines to incentivise early resolution and settlement of investigations.

933. ***Telecom2*** said fines are now so large that they are rarely collected. It said this is due in part to how they are calculated, using gross revenue rather than revenue after costs have been deducted, so the money simply isn't there. It argued this approach is a deterrent to entering the market. It said settlement needs to be operated fairly, and it would need more detail before it can comment fully. It also had concerns about enforcement across the value chain.

934. ***VMO2*** broadly agreed with the proposed changes to settlement, welcoming a more timely and effective process.

Level 1 providers

935. ***Donr Ltd*** agreed with our proposed changes to settlement although remained unsure how it will work for charities. It noted that the Fundraising Regulator has broader oversight of charity fundraising, so it is unclear if a PSA investigation would take priority over actions from the Fundraising Regulator. For context, it noted the Fundraising Regulator is able to request the Charity Commission to de-register a charity, which prevents harmful activities while not impeding legitimate charity donations.

936. ***Fonix*** agreed with our proposed changes to settlement.

937. ***Mobile Commerce & Other Media Ltd*** noted from the discussion document of the PSA's intention to offer a discount to fines issued where early settlement is made. It was concerned this appears to be a way for the PSA to force providers into early settlement and agreement to breaches in order to lessen the financial burden on them. It said this is neither transparent nor an effective way of regulation, where you are rewarded for agreeing to regulator sanctions for financial gain.

938. ***One industry respondent*** agreed that a clearly set out settlement process is beneficial to the industry. It said it is not clear from the proposal whether or not settlement is an admission of liability and what that means in terms of sanctions or how it could be used as part of future DDRAC.

Charities

939. ***Macmillan Cancer Support*** agreed with our proposed changes to settlement because it provides greater flexibility and allows organisations to reach settlement with the PSA earlier in the process, thus freeing up resources in terms of time and costs.

940. ***RSPCA*** and ***one other charity respondent*** agreed with our proposed approach to settlement.

Trade associations

941. ***aimm*** noted that the PSA has acknowledged that fines are rarely collected. As such, it said the levy has increased to a degree that threatens the sustainability of the market. It said that while a quick and efficient process would be welcome for very basic breaches of the Code that are administrative in nature, there is a concern that settlement could be used to gain quick wins for the PSA that are not balanced. It also noted that the discount is only applied after revenue is considered and sought clarity in what the template for discounts looks like, so it can assess the proposal properly. It also sought clarity regarding whether a settlement is tantamount to an admission of guilt.

Consumer and consumer advocates

942. ***PSCG*** agreed with our proposed approach to settlement subject to the need for sanctions to remove the financial benefit of a Code breach as well as such agreements being published so that consumers can see that justice has been done.

PSA's assessment of inputs received

943. The majority of respondents welcomed our proposals to introduce an enhanced settlement process which has increased settlement incentives, including a defined discount scheme.

944. We note the concerns raised as to whether this might be a way to force providers into early settlement and agreement to breaches. In responding to these concerns, it is important to be clear that settlement is a voluntary process for resolving a regulatory investigation which leads to a formal, legally binding regulatory decision. However, parties who are under investigation are not under any obligation to enter into a settlement process or to settle and the PSA has broad discretion (where an oral hearing has not been requested) to decide whether a case is appropriate for settlement or to agree to settlement. We therefore, don't agree that the objective behind this is to force providers into early settlement and agreement to breaches in order to lessen the financial burden on them - it is about providing an opportunity to the subject of an investigation to explore the possibility of following a more streamlined administrative procedure.

945. We also note concerns relating to requirements for an admission of liability and what that means in terms of sanctions and/or how it could be used as part of future DDRAC. We consider this point will be better dealt with as part of the published Procedures. However, and to be clear, settlement will invariably require acceptance of one or more notified breaches – as is currently the case under Code 14. Any sanctions

agreed will have to be appropriate for those breaches which are accepted, taking account of possible settlement discounts. However, there would not be any requirement for admission that breaches were deliberate (and therefore an aggravating factor) but we may record that they were inadvertent, and therefore they would point towards mitigation.

946. On the issue of clarity on settlement discounts, again, we will look to provide additional clarification on this as part of the published Procedures. Generally speaking, however, where the settlement process results in a final enforcement decision being issued, that decision may contain a fine amount, and if so will normally include a settlement discount. Our aim will be to conclude the settlement process as swiftly as possible. In line with this aim, the earlier the settlement process is commenced, the greater the discount available, as the resource savings that the PSA could achieve would be greater.

947. The discount will be considered on a case-by-case basis. We would normally expect:

- up to 30% where a successful settlement process is commenced before the relevant party is issued with an enforcement notice
- up to 20% where a successful settlement process is commenced after the enforcement notice is issued but prior to the relevant party formally responding to it, or
- up to 10% where a successful settlement process is commenced after the enforcement notice is issued and after the relevant party had formally responded to it.

948. We note that one respondent sought clarity as to how settlement would work for charities. To be clear, we do not see settlement working differently for charities than any other party which is acting as a PRS provider. Any party which we are investigating may request to enter into a settlement process at any point following receipt of a formal notification and before the case or matter is placed before a Tribunal.

Final decision

949. Having considered stakeholders' comments, we have decided to implement the proposals in relation to settlement (draft Code paragraph 5.5), as set out in our consultation document. We have also taken the opportunity to clarify at draft Code paragraph 5.5.4 (which applies where settlements proceed following a request for an oral hearing) that where a Tribunal has good reasons not to approve the settlement, it can make variations, additions or substitutions following consideration of any representations from the parties and will provide written reasons for any such changes. It will also have regard to Procedures issued by PSA, which will be used to provide, among other things, further clarification or examples of what good reasons might be. We have also made a consequential clarificatory change to draft Code paragraph 5.10.1 to confirm that the ability for a party or PSA to apply for a review also applies where such changes have been made. We have also clarified at draft Code paragraphs 5.5.1 and 5.5.2 that a settlement agreement can also be reached on the imposition of interim measures without Tribunal involvement where the case is not proceeding through the oral hearing route.

Strengthening the existing interim measures regime

950. We proposed the following:

Broadening the circumstances in which we can put interim measures in place

951. We proposed to widen the circumstances in which we can put interim measures in place. We proposed to be able to require this at any stage during enquiries or engagement with a relevant party (which includes prior to formal notification) where it appears to us that a breach of the Code has taken place and we consider that:

- the apparent breach is either causing or presents a serious risk of harm to consumers or the general public and requires urgent corrective action; and/or
- the relevant party cannot or will not comply with any sanction that may be imposed by a Tribunal, or an administrative charge imposed by the PSA.

A requirement on relevant parties to notify the PSA of all future outpayment dates promptly

952. We proposed to introduce a new Code provision that enables us to direct a relevant party to notify us of all future outpayment dates, where we intend to seek a withhold direction. This will help ensure that we can adequately assess the urgency of any withhold application and plan resources accordingly to maximise our ability to put any withhold direction into effect before the next payment out date.

A requirement on relevant parties to pay over to the PSA any monies subject to a withhold direction

953. We proposed to introduce a new Code provision that enables us to require a relevant party to pay over monies subject to a withhold direction to us as security against a fine or administrative charge that may be imposed for the relevant case, rather than being held by the network operator or intermediary. We considered this would improve the efficacy of the interim measures regime as it will enable us to secure withheld revenues whether or not a provider enters liquidation. We considered that this would have a positive impact on our ability to recover costs and fines. This would increase the effectiveness of the withhold provisions and would introduce a considerable practical disincentive to use of the insolvency rules to avoid sanctions.

954. We asked the following question:

Q39: Do you agree with our proposals to strengthen the existing interim measures regime? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

955. ***BT*** agreed with our proposals to strengthen the existing interim measures. It said the proposed use of interim measures earlier in the investigatory process will prevent further and avoidable consumer harm. It thought this would be a useful intervention in respect of non-cooperative market participants who seek to avoid payment of financial sanctions and act as a safeguard against unnecessary financial loss.

956. ***Telecom2*** agreed with the proposals to strengthen the existing interim measures regime but said it is unclear as to what constitutes a relevant party. It felt that where an Artificial Inflation of Traffic (AIT) case has been raised the consumers phone service provider should be required to pay over the service charges they have retained.

957. ***VMO2*** broadly agreed with the proposal to strengthen the existing interim measure regime.

Level 1 providers

958. ***Donr Ltd*** said that while our proposal to strengthen the existing interim measures regime makes sense, it suggested the PSA also review the approach of safeguarding funds as per the FCA requirements around e-money services. It said that under an e-money registration with the FCA, funds need to be held separate to any operational expenditure in a ring-fenced account with rights to that account relinquished by the banks. It said this is very similar to a client funds account, used by solicitors etc. It said that as it understands it, this would then prevent insolvency affecting funds as operational money and client funds are separated. While this may not be practical at the Level 2 level, it believed MNOs and Level 1 providers should be subjected to this requirement and it felt that the PSA is currently out of step with other regulators in this area.

959. ***Fonix*** supported our proposal to strengthen the existing interim measures regime.

960. ***Mobile Commerce & Other Media Ltd*** said it appreciates that fines are not collected sufficiently by the PSA, and that revenue withhold is the obvious way to increase this. It said that an additional requirement should be included under draft Code paragraph 6.2 to include the need to ensure that withheld funds are first used for refunds, before being used as security for PSA fines and admin fees.

961. ***One industry respondent*** agreed with our proposals to strengthen the existing interim measures regime and that this is an improvement on the current process and will help intermediaries.

Charities

962. ***RSPCA*** and ***one other charity respondent*** agreed with our proposals to strengthen the existing interim measures regime

Trade associations

963. ***aimm*** said its members are split regarding interim measures as to the PSA retaining withhold funds and asked for more clarity in regard to what the money would be used for if held by the PSA.

964. ***FCS*** agreed with our proposals to strengthen the existing interim measures regime.

Consumers and consumer advocates

965. ***PSCG*** agreed with our proposals to strengthen the existing interim measures regime.

PSA's assessment of inputs received

966. The majority of respondents supported our proposals to strengthen the existing interim measures regime and there was general agreement that the use of interim measures earlier in the investigatory process would prevent further and avoidable consumer harm.

967. We note that one respondent raised the issue of safeguarding funds as per the FCA requirements around e-money services and, in particular, that funds should be held separate to any operational expenditure in a ring-fenced account. It was argued we should mandate MNOs and Level 1 providers to hold customer funds separately. We do not have the power to require MNOs to hold separate funds for customers. In any event, we do not agree it is necessary or appropriate to do so for either MNOs or intermediaries. Our view is that the changes which we proposed (and are now confirming) are sufficient for us to deal with insolvency situations and are, therefore, proportionate.

968. We also note that some respondents asked for additional clarification in terms of the PSA retaining withheld funds and what this money would be used for if held by the PSA. Under Code 14 we made it clear in our supporting procedures document (paragraph 267) that refund sanctions are payable before fines or any administrative charge due to the PSA – we will retain this as part of published Procedures for Code 15.

Final decision

969. Having considered stakeholders' comments, we have decided to implement the proposals in relation to strengthening the existing interim measures (draft Code paragraph 5.6), as set out in our consultation document.

Proceedings before the CAP and Tribunals

970. We proposed to make use of single legally qualified decision-makers in less serious cases. So, instead of requiring a full Tribunal (of three CAP members) to sit to consider a case brought by the PSA, the case would be heard by one legally qualified CAP member. We said that the types of breaches we would use this new approach for include those that are more administrative in nature, such as a failure to keep registration information up to date, or a failure to comply with a sanction.

971. As part of this change, we said we would also look to design a streamlined process for placing cases before the single decision-maker, so that we can pursue these without creating a burden on our already limited resource and strike a balance between proactive supervisory work and casework that will enable us to have the most significant impact in the consumer interest.

972. We asked the following question:

Q40: Do you agree with our proposals to introducing a new "single decision maker" as an alternative to the full Tribunal for more straightforward cases? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

973. ***BT*** agreed it is appropriate for a single legally qualified CAP member to decide a case in respect of less serious administrative breaches. It said the decision-making process for investigations also has a number of integrated safeguards in terms of oversight and peer review on the investigations team, Investigations Oversight Panel (IOP) review in terms of case management and quality control and in-house legal advice. It thought this streamlining will lead to greater process and cost efficiencies. It suggested that PSA consider designing a suitable mechanic which would give providers a right to appeal, in the event they wish to challenge the decision of the single decision maker.

974. ***Telecom2*** agreed in principle with the proposal for a single decision-maker where the case is straightforward. It said it would expect the decision maker to have strong industry knowledge as well as legal knowledge. It also said it would not agree to a single decision maker where there is some argument over the facts and their interpretation.

975. ***VMO2*** broadly agreed with this proposal but said it would like the PSA to ensure clarity and transparency regarding the single decision maker and their ability to be impartial with the relevant knowledge of the industry.

Level 1 providers

976. ***Donr Ltd*** was supportive of our proposals to introducing a new single decision maker as an alternative to the full Tribunal for more straightforward cases. It said it would welcome the CAP having more experience of using PRS services, especially in the charity sector where there is a wealth of fundraising knowledge that can be tapped into.

977. ***Fonix*** agreed in principle agreed with our proposals to introducing a new single decision maker as an alternative to the full Tribunal for more straightforward case. It noted, however, it is important that the single decision maker has relevant experience of the phone-paid services market and understands the different models in place across all billing mechanics to ensure a fair and unbiased review of services.

978. ***Infomedia*** said it has no concerns with the principle, however, it felt that the qualification criteria for single vs full Panel is not well defined. Additionally, it said that "legally qualified" should also be better defined. It suggested the person should at least be a registered legal practitioner with the Law Society or Bar Council.

979. ***Mobile Commerce & Other Media Ltd*** did not agree with the instances where we suggested that this could be used, and said it is unclear in what circumstances a single decision maker could be used.

980. ***One industry respondent*** did not feel there is sufficient detail provided at this time to be able to comment.

Charities

981. ***Macmillan Cancer Support*** said, in principle, it has no objections to our proposals to introduce a new single decision maker as an alternative to the full Tribunal, but it would be useful to know whether there is an appeals process for decisions made by the single decision maker along with the criteria that the PSA uses for appointing them.

982. ***RSPCA*** and ***one other charity respondent*** agreed with our proposals to introducing a new single decision maker as an alternative to the full Tribunal for more straightforward cases.

Trade associations

983. ***aimm*** said that while it understood that the single decision maker would be legally qualified, they should also be industry experienced. It said there was a concern raised that by using one individual only, there is more likely to be bias, possibly unconscious bias, leading to subjective and potentially unfair judgements.

984. ***FCS*** agreed with our proposals to introducing a new single decision maker as an alternative to the full Tribunal for more straightforward cases.

Consumer and consumer advocates

985. *PSCG* agreed with our proposals to introduce a new single decision maker and that, in the interests of speed and efficiency, some simpler cases could appropriately be heard by a single, legally qualified CAP member.

PSA's assessment of inputs received

986. The majority of respondents were strongly supportive of our proposal for a single decision maker. There was general agreement that, in the interests of speed and efficiency, some simpler cases could appropriately be heard by a single, legally qualified CAP member.

987. We also note that both industry webinar attendees and respondents said that they expected that the single decision maker should have strong industry knowledge as well as legal knowledge, including the charity sector. While we agree with these comments and the importance of making sure that any decision-makers have relevant experience of the phone-paid services market and are able to be impartial, we also note that the main types of cases envisaged to be dealt with by a single decision maker are more administrative in nature, such as registration breaches and breach of sanctions cases and, therefore, do not require in-depth industry knowledge or experience. However, we will continue to make sure that we have the right blend of skills, knowledge and experience in terms of membership of the CAP, which remain important for both single decision makers and full Tribunals alike.

988. In terms of appeals processes for decisions made by the single decision maker along with the criteria that the PSA uses for appointing them, we can confirm that the draft Code at paragraph 5.10.1 provides for reviews to be applied for in respect of adjudications made by either a single decision maker or a Tribunal. In terms of criteria for appointing a single decision maker, we want to make clear that all appointments are made to the CAP in accordance with draft Code paragraph 6.3.1 which sets out the relevant experience required (which is unchanged from current requirements under Code 14). Draft Code paragraph 5.7.1 makes clear that the single decision maker (where appropriate for cases) will be a legally qualified CAP member. As to appointments to a particular case, given what we say in the paragraph above about the types of cases we envisage would be dealt with by a single decision maker we do not consider there to be a need for any specific criteria. However, where a case might suggest it would be beneficial for the single decision maker to have a particular knowledge or experience this would be taken into account when we list the matter for determination.

Final decision

989. Having considered stakeholders' comments, we have decided to implement the proposals in relation to introducing a new single decision maker as an alternative to the full Tribunal for more straightforward cases (draft Code paragraphs 5.7), as set out in our consultation document.

Introducing a threshold for oral hearings

990. We proposed reducing the range of circumstances in which a provider can request an oral hearing by introducing thresholds for requesting one. We proposed that oral hearings can be requested where there are serious and complex issues to be determined in a case and a fair hearing would not be possible without such a hearing. In addition, we proposed that the request for an oral hearing should be considered by the Chair of the constituted Tribunal or CAP who will then determine whether or not to grant an oral hearing.

991. Our provisional assessment was that it is appropriate for us to introduce a threshold to restrict the circumstances in which oral hearings may be requested while ensuring that fair determination of cases is always achieved. We considered that our proposal strikes the right balance between reducing abuse of the oral hearing process and ensuring that the requirement for fairness is met. We also considered that this position is strengthened by our proposal to include a general ability for the relevant party or the PSA to request oral representations to clarify any matter for the Tribunal where the case is to be determined on the papers.

992. We asked the following question:

Q41: Do you agree with our proposal to limit the circumstances in which a provider can request an oral hearing? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

993. ***BT*** agreed that this is appropriate for less serious or complex matters. It said, however, that it would like clarity on the thresholds for an oral hearing.

994. ***Telecom2*** did not agree and felt that the present circumstances in which an oral hearing can be requested are the minimum. It said oral hearings can cause delays but the main delays seem to be the PSA investigations which take far too long.

995. ***VMO2*** broadly agreed with the proposal on oral hearings but said it would like the PSA to ensure this does not limit a providers' ability to be heard in a timely manner.

Level 1 providers

996. ***Donr Ltd*** agreed with our proposal to limit the circumstances in which a provider can request an oral hearing. It suggested a more specific threshold definition is needed, as this proposal would only seem to prevent legitimate requests to the oral hearing process but retains access for people looking to abuse the process.

997. ***Infomedia*** agreed with our proposal but asked to be assured that the PSA has taken appropriate legal advice on the threshold change to avoid the risk of costly delays should the refusal of oral hearing become a matter for judicial review.

998. ***Mobile Commerce & Other Media Ltd*** said oral hearings are an effective way to have open and honest communications with providers, and the PSA should not be looking to limit the use of these but should instead be looking to make better use of them which would reinforce effective, transparent and proportionate regulation.

999. ***One industry respondent*** noted oral hearings are a mainstay of most open and fair enforcement processes. It therefore argued the removal should be only in very limited circumstances. On the current information, it said the proposal is not clear that this would be the case and further detail is required before it could agree to it.

Charities

1000. ***RSPCA*** and ***one other charity respondent*** agreed with our proposal to limit the circumstances in which a provider can request an oral hearing

Trade associations

1001. ***aimm*** said its members were reluctant to agree to giving up their right to an oral hearing as the paper-based system is not trusted and can feel like a fait accompli. It also sought clarity on the process that is required to be satisfied should a judicial review be sought. It said there is some confusion around paragraph 480 of the consultation document and sought clarity into why settlement is suggested to be unwelcome here.

1002. ***FCS*** agreed with our proposal to limit the circumstances in which a provider can request an oral hearing. It argued that it could not see what can be gained via oral hearings that cannot be relayed in writing and, therefore, exceptional use seems right.

Consumers and consumer advocates

1003. ***PSCG*** also agreed with our proposal to reduce the range of circumstances in which a provider can request an oral hearing. It said oral hearings were often used as a delaying tactic by providers.

PSA's assessment of inputs received

1004. The majority of respondents agreed with our proposal to limit the circumstances in which a provider can request an oral hearing. We welcome stakeholder support with regards to this proposal.

1005. We note that some respondents expressed concern that this proposal may prevent legitimate requests to the oral hearing process, as did some attendees at our industry webinars. To be clear, this is not the

intention. We are simply looking to introduce a threshold to restrict the circumstances in which oral hearings may be requested, while ensuring that fair determination of circumstances is always achieved. We do not see this proposal in any way as limiting a providers' ability to be heard in a timely manner.

1006. In responding to comments about the impact on any possible judicial review, we want to be clear that we do not consider that there is any impact in terms of the changes we are suggesting and the ability of providers to pursue judicial review. In each case it will be for the provider (taking appropriate legal advice), as is the case currently, to determine whether there are sufficient grounds for judicial review and ensure all applicable procedural rules and requirements are followed.

1007. We have also noted Infomedia's comments relating to whether we have taken appropriate legal advice on these matters. We can confirm that as would be expected, we have.

Final decision

1008. Having considered stakeholders' comments, we have decided to implement the proposals in relation to our proposal to limit the circumstances in which a provider can request an oral hearing (draft Code paragraph 5.7.9), as set out in our consultation document.

Strengthening the test for prohibiting individuals

1009. We proposed expanding the test for prohibiting a relevant individual so that they can be prohibited either from involvement in the industry as a whole or from involvement in specified types of services, where it is demonstrated that they were either "knowingly involved" in serious breach(es) and/or "failed to take reasonable steps to prevent such breaches". We considered that good management accountability and strong internal governance and oversight are crucial to enabling effective regulatory compliance, which in turn works in the bests interests of consumers and thereby the industry as a whole.

1010. We also noted this is consistent with powers other regulators have including, for example, ICO. From spring 2017 and following amendments to the Privacy and Electronic Communications Regulations legislation, it is now possible for the ICO to hold directors personally liable for data protection breaches.

1011. We also considered this proposal would dovetail with other provisions of the draft Code relating to verification/supervision and our proposed new registrations, DDRAC and Systems Standards (to the extent that it sets expectations around the need for senior oversight).

1012. We also said we would provide further detail as to how this would work within our published Procedures, including providing greater clarity and certainty on the following:

- identification of the functions/roles that we would consider to be "senior managers"
- obtaining from providers at the outset a clear definition of their roles and areas of responsibility/accountability
- what "reasonable steps" to prevent breaches might consist of, so that there are clear expectations for industry and against which sanctions can be imposed where appropriate and proportionate.

1013. We asked the following question:

Q42: Do you agree with our proposal to expand the test for prohibiting a relevant individual from the industry or specified services? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

1014. *BT* agreed with our proposals to broaden the test for prohibiting a relevant individual from industry. It said the expanded criteria of being "knowingly involved" in serious breach(es) and/or if an individual "failed to take reasonable steps to prevent such breaches" is appropriate in terms of good governance and from an accountability/oversight perspective.

1015. ***Telecom2*** understood the PSA's concerns relating to prohibiting individuals but said it needed more detail before it can comment fully.

1016. ***VMO2*** agreed with the proposal to expand the test for prohibiting a relevant individual from the industry.

Level 1 providers

1017. ***Donr Ltd*** disagreed with our proposal to expand the test for prohibiting a relevant individual from the industry as it appears to be based solely on the case of Veoo Ltd DDRAC case. It challenged the notion that the case demonstrated "a worrying general lack of emphasis within the industry on management accountability, internal governance and oversight".

1018. ***Fonix*** agreed with our proposal to expand the test for prohibiting a relevant individual from the industry or specified services but that it would need to see the detailed criteria within the PSA published Procedures in order to pass full comment.

1019. ***Infomedia*** agreed with our proposal in respect of expanding the test for prohibiting relevant individuals from the industry or specified services subject to its comments made in relation to Q42. It noted this aligns well with other regulatory regimes. It raised a note of caution, though, relating to the potential wide scope especially given the personal impact of these measures.

1020. ***Mobile Commerce & Other Media Ltd*** reinforced the importance of the need for the PSA to verify entrants to the market. It said if the PSA carried out adequate due diligence on the people wishing to register, then there would be less cause for these types of sanctions to be put in place.

1021. ***One industry respondent*** did not feel there is sufficient detail provided at this time to be able to comment.

Charities

1022. ***Macmillan Cancer Support*** said it would welcome some further clarity on the thresholds that senior managers would be required to meet to ensure that they were taking "reasonable steps" to prevent breaches of the PSA Code.

1023. ***RSPCA*** and ***one other charity respondent*** agreed with our proposal relating to expanding the test for prohibition of individuals.

Trade associations

1024. ***aimm*** said it could not agree with our proposal relating to expanding the test for prohibition of individuals until further detail was provided. It noted that bad actors in the marketplace are often expert at concealing themselves and may often have no intention to comply with the Code, making it impossible to detect their previous wrongdoings.

Consumers and consumer advocates

1025. ***PSCG*** agreed with our proposal to expand the test for prohibiting a relevant individual from the industry. It said it would prefer to see such individuals held personally liable for breaches of the Code where they have been negligent or have knowingly allowed serious breaches of the Code resulting in consumer harm.

PSA's assessment of inputs received

1026. The majority of respondents were broadly supportive of our proposal to expand the test for prohibiting a relevant individual from the industry or specified services.

1027. We note one respondent did not agree and argued further details are needed. It also argued that it is often difficult to identify bad actors, including detecting previous wrongdoings. While we are sympathetic to these points, we would expect that this sort of concealment should be more difficult under our new regulatory approach. In particular, through a greater focus on upfront verification, both through enhanced notification to the PSA through the registration scheme and strengthened DDRAC Requirements on networks and intermediaries to assess and control the potential risks of parties who they contract with.

1028. On a related point, we note one respondent mentioned the importance of the need for the PSA to verify entrants to the marketplace, and that it should carry out its own due diligence on people wishing to register. As we have already discussed (paragraphs 678 and 679), our proposed approach to verification is one of enhanced notification rather than enhanced verification. But to be clear, there is nothing in the draft Code which precludes the PSA from carrying out additional checks. We are happy to discuss with industry through our business planning and budget process what an appropriate level of verification and due diligence by the PSA should be and how that can be best resourced.

1029. In terms of the Veoo Ltd DDRAC case, we do not agree that our proposals are predominantly based on the weaknesses identified in this case – although they are clearly relevant. The issues we are looking to address are much broader than this one case and are more focused about tackling a much wider issue relating to a general lack of emphasis within the industry on management accountability, internal governance and oversight.

1030. We also note the comments relating to the need to have more detailed criteria within our published Procedures in order to be able to provide more detailed comments. We agree with these comments and we intend to provide additional clarification through our published Procedures.

Final decision

1031. Having considered stakeholders' comments, we have decided to implement our proposal to expand the test for prohibiting a relevant individual from the industry or specified services (draft Code paragraphs 5.8.5(f) and (g)), as set out in our consultation document.

Additional powers, responsibilities and obligations

Strengthening and expanding our information gathering powers (including for the purpose of supervision/engagement and enforcement)

1032. We proposed the following:

Information gathering directions outside formal investigations

1033. We said we wanted to broaden the range of information that we can require of providers, to enable us to develop a full picture more quickly, target our resources and require providers to take swift corrective action, whether or not we choose to formally investigate. This will enable us to formally request information from providers about any aspect of a service or value chain, through the sending of a formal direction, including for the purpose of market reviews, and irrespective of whether or not a formal notification of an investigation has been given.

1034. We noted this proposal would also be critical in supporting our proposed new supervisory function under Code 15 as this will require early and effective engagement with industry and the gathering of information outside the context of a formal investigation.

Request information held by parties who are not in the value chain

1035. We said we wanted to be able to ensure that we can request information which is held by third parties who potentially sit outside the value chain but who may hold information which would assist our engagement and enforcement activities. We proposed to do this by including new obligations in the DDRAC Standard which requires that network operators and intermediary providers ensure that any persons with whom they contract enable information gathered in the course of conducting DDRAC to be shared with the PSA upon request.

Codify data retention requirements

1036. In 2018, we published guidance setting out our expectations to industry in respect of data retention, both in terms of personal data (to assist industry in setting its own data retention polices to comply with GDPR) and in terms of the information we would expect to be retained and available in the event of an investigation.

1037. Under Code 15, we proposed to make it mandatory that providers retain all information that is potentially relevant to an investigation by bringing this within the scope of Code 15. This will give us the ability to impose a penalty if a provider fails (without proper justification under the law) to retain

any relevant data as required. Codifying the guidance would also provide clarity in relation to our expectations in respect of the retention of personal data, while enabling providers to comply with their own personal data retention obligations under the UK GDPR.

1038. The current guidance contains a non-exhaustive list of relevant data that should be retained. As the market evolves, we expect the types of data that should be retained will also evolve. To futureproof any new Code Requirement and to maintain flexibility, we proposed that this new obligation would require the retention of the data listed in a separate data retention notice.

1039. We asked the following question:

Q43: Do you agree with our proposal to strengthen and expand our information gathering powers (including for the purpose of supervision/engagement and enforcement)? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

1040. ***BT*** said it is not opposed in principle to the PSA's expansion and strengthening of information gathering powers providing they are used in a proportionate way. It said it would welcome further guidance in this area and clarity on how the PSA will use its supervisory framework to prioritise and evaluate its strategic priorities.

1041. ***Telecom2*** said that as it stands this is unworkable. It said providers will have to make an uninformed judgement on what might be potentially relevant to an investigation when they have no expectation that there might be an investigation in the future. It was also concerned this may place providers in breach of GDPR if they retain information for which there is no stated definite need. It also requested guidance on just how far outside the value chain providers are required to perform DDRAC on.

1042. ***VMO2*** broadly agreed with the proposal to strengthen and expand the PSA's information gathering powers for the purposes of ensuring a more proactive and effective approach to regulation. It had some concerns and requested more transparency in sharing information gathered to ensure that as an MNO it can also act in a timely and effective manner to any potential issues or incidents of consumer harm.

Level 1 providers

1043. ***Donr Ltd*** said that while this is a necessary requirement, it wanted to raise conflicting requirements with charities that use text giving for telephone-based recurring donation fundraising. In this scenario, a charity or their contracted call centre will call a supporter about making a regular donation to the charity. On the call (assuming the supporter agrees), they will take a first opt-in verbally, over a recorded call. The second opt-in by text is then made, after which a recurring donation is set up successfully. Charities have assessed these call recordings under their data protection requirements and would generally keep them for a period of three months, which is sufficient for card or direct debit based regular donations. If the supporter elects to donate by mobile, guidance and in turn Code 15, requires this call to be retained for two years. This creates an unnecessary burden on a charity to store this data long term. In its view, if a three-month call retention period is good enough for card and direct debit donations, then this should be sufficient for mobile donations.

1044. ***Fonix*** said it needs further clarification in terms of the data required and that the PSA need to be explicit in terms of what time frame they require data retention.

1045. ***Infomedia*** said it has no concerns with the principle of making the 2018 data retention guidance a requirement but expected that, in conjunction with the value chain liability proposals, it is made clear that only one party in the value chain can be held accountable for storage. It said without these provisions, each value chain partner will need to hold copies of all data which is excessive, disproportionate and contrary to the principles of data protection regulation. It did not accept the argument that the PSA can, simply by virtue of its regulatory status, disregard the principle of data minimisation.

1046. Similar to the point it made in responding to Q29, it also felt the broad phrasing of "any person with whom they contract" as set out in paragraph 499 of the consultation document is excessive and

disproportionate and should be tempered with wording to the effect that it is limited to contracted parties involved in the provision of PRS or any part of PRS delivery which is a regulatory requirement.

1047. It also encouraged a clear line to be drawn between information required for regular supervisory purposes, which should be defined, and that required for investigations (formal or informal).

1048. ***Mobile Commerce & Other Media Ltd*** did not agree with our proposal to strengthen and expand our information gathering powers and was concerned that this looked like a case of the PSA abusing its power to gain further information from the market which, it said, they are not entitled to.

1049. ***One industry respondent*** said it could not agree with our proposals on information gathering powers as there is no clear guidance or timeframes and creates a requirement that goes against the UK GDPR principle of data minimisation and potentially creates breach of contractual confidentiality.

1050. ***RSPCA*** and ***one other charity*** respondent agreed with our proposals on information gathering powers.

Trade associations

1051. ***aimm*** noted that the draft Code suggests that the value chain is responsible for DDRAC on all those it contracts within the operation of phone-paid services. However, those who sit outside the value chain and are not regulated by the PSA do not have to adhere to these regulations and it was concerned this could be impossible to enforce. It also expressed concern about the requirement for providers retain all information that is potentially relevant to an investigation. It said it entirely disagreed with this, as the parameters are too wide and unknown. It said its members feel strongly that they cannot be expected to know what may be relevant to an investigation when there is no template of documents to work from and the timeline is unlimited. It said they also have concerns that this would entirely clash with their GDPR obligations.

1052. ***FCS*** agreed with our proposals to strengthen and expand our information gathering powers and noted that evidence- based decisions are critical to ensuring accurate enforcement decisions.

Consumers and consumer advocates

1053. ***PSCG*** agreed with our proposal to strengthen and expand our information gathering powers. It noted that it was clear that the PSA are frequently denied the information they require to conclude an investigation and that by clearly stating the data which should be retained, enforcement should be simplified.

PSA's assessment of inputs received

1054. We note responses were generally mixed on this question albeit the majority of respondents were supportive of our proposals on the basis that effective information powers are critical to regulators being able to take evidence-based decisions and deciding on appropriate next steps.

1055. A number of respondents were concerned that these proposals may place providers in breach of GDPR requirements. As already discussed in relation to the Consumer privacy Standard, (see paragraphs 602 and 603) we do not agree with this view, as the provision makes clear that it is subject to the requirements of the law. Furthermore, we consider that our data retention requirements are entirely consistent with both the data minimisation and storage limitation principles as in our view the law does not dictate the amount of personal data that should be collected nor the duration that they should be kept for; these are to be determined by reference to the purposes for which the data is collected and stored. In our view collection and storage of personal data that is necessary for legal / regulatory compliance purposes (in addition to a provider's other purposes), particularly where our data retention notice is clear on the types of information to be retained and the duration, would not cause providers to be in breach of these principles. We would recommend that providers seek appropriate advice, including on building in our data retention requirements into their retention and privacy policies and notices.

1056. There was also concern expressed about the need for proportionality in the way we use our supervisory framework to prioritise and evaluate our strategic priorities. Respondents welcomed further clarity on how we would use these new information gathering powers in meeting the test of proportionality. We have already addressed these points above (see paragraphs 828 and 829) in responding to similar points in the context of our new supervisory powers. Our view remains that the Code already includes a number of safeguards which require that the PSA only uses its powers in a proportionate way, having regard to various tests which have been built into the Code.

1057. We note some comments were raised in relation to conflicting data retention requirements with charities that use text giving for telephone based recurring donation fundraising. While we recognise there may be variations between different sectors in terms of data retention periods, our view remains that it is important that providers retain all relevant information required by our data retention notice for the required time period. We will provide additional clarity in terms of the types of data and timescales, as well as factors we have taken into account in determining them, in our data retention notice which will be published prior to Code 15 coming into force.

Final decision

1058. Having considered stakeholders' comments, we have decided to implement the proposals in relation to strengthening and expanding our information gathering powers (including for the purpose of supervision/engagement and enforcement) (draft Code paragraphs 6.1 to 6.3), as set out in our consultation document.

Assessment framework

1059. We said in our consultation document that we provisionally considered our proposed new approach to engagement and enforcement powers (including additional powers, responsibilities and obligations) meets the tests which we set out in the discussion document, namely that they are: effective, balanced, fair and non-discriminatory, proportionate and transparent.

1060. We asked the following question:

Q44: Do you agree with our assessment of our proposals relating to: engagement and enforcement; and additional powers, responsibilities and obligations – against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

1061. ***BT*** generally agreed with the assessment of our engagement and enforcement proposals; and additional powers, responsibilities and obligations – against the general principles. It noted there are further questions of proportionality and transparency in respect of how some of the enforcement and information gathering powers will be used, pending further clarification of the Supervisory framework and supporting Procedures.

1062. ***Telecom2*** made the following observations:

- the speed of investigations is a known issue but the PSA themselves are the main delay and none of the measures will impact on this. It wanted to see the PSA tied to formal timescales as they do to providers.
- in terms of balance, it had concerns over settlement as it thought there is potential for it to be misused and to imply guilt when there had been no admission of such
- it did not feel that the proposals are fair as they place obligations and potentially liability on people who have no direct control over the operation of PRS or the people providing it
- it said the PSA has some responsibility in this area, and should validate the data provided on registration
- it also had concerns around restricting the right to oral hearings. It did not feel this is proportionate. It said the proposal draws in people who have no control over the operation of PRS. It also noted the data retention requirements are onerous and could cause providers to breach GDPR/DPA. It also expressed concern that the draft Code is obscure in that the data requirements aren't specified. It was concerned this leaves providers open to being in breach of the code based on the subjective opinion of PSA.

1063. ***VMO2*** agreed with the provisional assessment of our proposals subject to the detailed concerns it set out.

Level 1 providers

1064. ***Donr Ltd*** said that, aside from the points raised in Q41, Q42 and Q43 (see paragraphs 996, 1017 and 1043), it is broadly supportive of this. It noted in general feedback that the PSA has battle tested this approach and feel it is sufficient to resolve cases within a quick timescale. It also noted the PSA has not published case resolution KPIs or data around backlogs previously. If these were to be published, then it would have better evidence to feedback support of proposed budget increases to reduce case backlogs.

1065. ***Fonix*** agreed with our assessment of our proposals relating to engagement and enforcement; and additional powers, responsibilities and obligations against the general principles.

1066. ***Infomedia*** agreed the provisional assessment subject to its comments above insofar as they touch the assessment principles.

1067. ***Mobile Commerce & Other Media Ltd*** did not agree with our assessment against the general principles and said our general approach is overly prescriptive, unbalanced in favour of the PSA and is not transparent. It was concerned the PSA is proposing excess reporting where no breach has actually been identified, and it is not transparent how this information will be used. It also argued that the PSA should put timescales on its part of the process so that it can be held accountable for their part to play in the value chain.

1068. ***One industry respondent*** did not agree with our assessment against the general principles because it did not believe the assessment is accurate based on the issues it has identified at Q43 (see paragraph 1049).

1069. ***RSPCA*** and one other charity respondent agreed with our assessment against the general principles.

Trade associations

1070. ***aimm*** made the following comments relating to our assessment of our proposals relating to engagement and enforcement proposals; and additional powers, responsibilities and obligations against the general principles:

- potentially effective – it said it is generally in favour of a Code which that make the investigation process more efficient, and better allow the PSA to recover costs and fines but sought assurance that the PSA would also look to ensure their own processes match the timelines and demands on industry.
- potentially unbalanced – it noted settlement is encouraged within the draft Code but is also stated as being something to avoid when referring to industry seeking availability of an oral hearing to achieve just that. It sought clarity on this point.
- potentially unfair – it said those not regulated by the PSA are expected to be kept in check under these proposed regulations, making the commercial viability of phone-paid services more tenuous than ever as regulation is forced on non-regulated parties.
- disproportionate – it said some elements are not rational and will disproportionately increase the burden on industry who are being asked to retain all information that could potentially be relevant to an investigation, with no parameters of what this might cover and for how long.
- not transparent – it said the draft Code does not clearly set out expectations in all areas, particularly relating to data retention requirements for information that the PSA deem might be required in any historical period for an investigation.

Consumer and consumer advocates

1071. ***PSCG*** agreed with our provisional assessment of our proposals relating to engagement and enforcement proposals; and additional powers, responsibilities and obligations – against the general principles. It agreed that for well organised providers, operating within the terms of the Code, there should be little additional work.

PSA's assessment of inputs received

1072. We have had regard to stakeholder comments made in relation to our assessment of our proposed new engagement and enforcement function against the general principles which we set out in the discussion document. A number of these we have addressed in responding to various stakeholder responses to questions 37 to 43 above.

1073. Having done so, we consider that our new approach to engagement and enforcement meets these tests, as we set out below:

- **effective** as they are designed to address issues we have encountered under Code 14 which we consider have adversely impacted on the effectiveness of our current approach to engagement and enforcement. These challenges, in particular, as already identified, are as follows:
    - the speed of investigations
    - no clear framework around informal resolution
    - a lack of flexibility for dealing with potential breaches of the Code outside of formal action (and, in particular, where we may wish for specified corrective action to be taken without proceeding to formal investigation/enforcement or imposing broader sanctions)
    - limited circumstances under which we can issue enforcement notices
    - a lack of clarity and visibility regarding the benefits of settlement
    - the effectiveness of our interim measures regime and, in particular, our ability to recover costs and fines
    - our ability to prohibit individuals due to difficulties in proving under Code 14 that they have been "knowingly involved" in a serious breach(es) of the Code
    - a lack of powers to formally request information prior to a case being formally investigated.
- **balanced** as they are designed to ensure that our approach to enforcement is effective, efficient and acts as a credible deterrent to non-compliant providers. In terms of our proposal to provide an enhanced settlement process, we consider that this will provide greater certainty, and has the potential to reduce costs and other resources for both industry and us.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular description of persons. Specifically, we note that our new enforcement powers and procedures will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as they are rational and will not disproportionately increase the burden on industry. Indeed, the majority of changes being proposed should impact positively on the regulatory burden as they are designed to deal with compliance concerns earlier and quicker, and without moving to formal enforcement. This should reduce the potential for costs and other resources for both industry and us. In particular, our provisional assessment is that the proposed approach and measures, are proportionate to the issues we want to address through Code 15:
    - deficiencies in our existing information gathering powers meaning we are unable to obtain information relevant to an investigation in an effective and timely manner, including outside of formal investigations
    - deficiencies in our existing interim measures regime, meaning that any monies 'withheld' at interim stage are unlikely to be recoverable by us in the event that the provider enters liquidation before the final hearing
    - reduced effectiveness and deterrent effect of sanctions that are meant to adequately address consumer harm and serve as a credible deterrent to non-compliant providers and the broader industry

- a potential inefficient adjudicative regime, meaning that there is no streamlining of decision-making in respect of more straightforward, administrative type breaches, such as registration breaches and that, consequently, more minor but potentially widespread market non-compliance cannot be dealt with in a swift and less resource intensive manner.

- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. In addition, the effects of the changes are clear on the face of the relevant provisions of Code 15. Therefore, we consider that the Code and this accompanying statement, clearly set out to industry the Requirements that will apply to them, including changes from the Code 14, and do so in a transparent manner.

8. Other general Code considerations

General funding Requirements

Background

1074. We are currently funded through a levy funding model. The levy is applied to the actual size of the phone-paid services market, defined as total phone-paid services outpayments from network operators to their PRS industry clients, i.e., after retaining their network charges from total revenues received.

1075. To date, a theoretical unadjusted levy has been set, which is the rate that would be required to recover the full cost of our budget as a proportion of phone-paid services outpayments.

1076. In practice, an adjusted levy has been applied as the rate required to recover the full cost of our budget after the following adjustments:

- deductions made in respect of:
  - estimated over recovery of levy in previous year
  - retained funds available, based on estimated fines and administrative charges collected in the previous year.
- additions made in respect of:
  - estimated under recovery of levy in previous year
  - exceptional need to increase our contingency reserves.

Consultation proposals

1077. We said we were minded to retain the existing levy model. This model is fundamentally based on an unadjusted levy, where our budget is recovered in full through a levy on outpayments. However, under our existing model, we also use collected fines and administrative charges to adjust this levy downwards.

1078. Our reasons for this position were as follows:

- we are aware that any change in where the levy is collected from (e.g, from Level 1 providers) will impact on commercial arrangements within the value chain. At the same time, it will also undermine our administrative effectiveness and efficiency in terms of levy collection.
- we are concerned that moving to an alternative funding model, such as one that looks to move away from the current levy model, may result in less certainty of funding for the PSA. This may leave us vulnerable to changes in the market and/or the number of providers.
- we believe significant changes to our registration scheme fees may have an adverse effect on companies entering or remaining in the phone-paid services market, at a time when we are actively pursuing a regulatory approach that supports growth, stimulates competition and encourages market entry
- alongside this, more work would have had to be done to identify and agree how collected fines and administrative charges would be disbursed, if not part of our funding model.

1079. We asked the following question:

Q45: Do you agree with our proposals on general funding arrangements? Do you have any further information or evidence which would inform our assessment of our proposals on general funding arrangements?

Stakeholder comments

Network operators

1080. ***BT*** agreed with our proposals to retain the existing general funding model while noting that the consultation question was confined to the mechanic of the funding model.

1081. ***Telecom2*** said the current method of funding works well but the level of funding is causing concern.

1082. ***VMO2*** agreed with proposals on general funding arrangements. However, it sought more clarity from the PSA on the allocation of resources and review of the fine collections process to minimise the impact of the levy throughout the value chain and by continuing to enforce a "polluter pays" process.

Level 1 providers

1083. ***Donr Ltd*** it was satisfied with the current approach to funding the PSA and the levy. It said it believed that charity donations are exempt from the levy and would like to see this fully documented in the draft Code. Additionally, it suggested society lotteries should also be exempt as the end benefactor is also a charity.

1084. ***Fonix*** agreed that the levy model is a recognised method of funding regulation. However, it did not believe enough has been done to review PSA budgets in light of complaints declining and would support the PSA reviewing their associated costs.

1085. ***Infomedia*** agreed with our proposals on general funding arrangements.

1086. ***One industry respondent*** did not feel there is sufficient detail provided at this time to be able to comment.

Broadcasters

1087. ***Global*** believed the PSA has become "bloated and over-funded" for the service it needs to provide. It said there are serious questions about whether the PSA provides "good value" to both industry and consumers. It also argued that increasing costs (and lowering outpayments for providers as a result) is not sustainable and the PSA needs to evaluate what it needs to provide in terms of regulation and how it can do so in a robust but cost-effective manner. It suggested that Ofcom do a top-down review of how phone-paid services are regulated in the UK and whether, using the research conducted by aimm on other similar territories, there may be a better, more efficient and cost-effective way of regulation.

Trade associations

1088. ***aimm*** said that while the levy model is generally seen to be a recognised way of funding regulation, there have been concerns over the sustainability of industry if it is asked to continually fund an unadjusted levy of £4 million each year. It said it had responded to the PSA's consultation on the business plan and budget in detail and indicated that this is not a model that can continue if the market is to grow. With the commercial model being seriously compromised by the squeeze in available outpayments due to the unadjusted levy, new business will be harder to come by and existing business is threatened. It said there is an urgent need for a review because of the unadjusted levy impact as a percentage of market revenue. It sought clarity on the allocation of resources and fine collection on an ongoing basis to ensure that there is monitoring of spending and that any cost savings are being considered. As such, it looked to the PSA to find ways to decrease its cost base and would like to see attention focused initially on premises and complaint handling (complaints being demonstrated as being at their lowest in PSA history).

1089. ***FCA*** agreed with our proposals on general funding arrangements.

Charities

1090. ***RSPCA*** and ***one other charity respondent*** agreed with our proposals on general funding arrangements.

Consumers and consumer advocates

1091. ***PSCG*** did not agree with our proposals on general funding arrangements and said it remains of the view that the costs of regulation should fall primarily on those services necessitating it.

PSA assessments of inputs received

1092. We note that the majority of respondents agreed with our proposals in relation to the funding model. A number of respondents used the opportunity to repeat their ongoing concerns about the level of the PSA's budget. Since the proposals set out in the consultation document relate solely to the funding mechanism, rather than the size of the PSA budget, we consider that this is not the place to comment on these concerns but we look forward to our continued engagement with stakeholders on this during our forthcoming consultation on the PSA business plan and budget.

Final decision

1093. Having considered stakeholders' responses, we have decided to implement all the proposals set out in Section 7 of the draft Code in relation to funding arrangements.

Definitions

Background

1094. In the context of our Code, there are three categories of defined providers. These are:

- network operators
- Level 1 providers
- Level 2 providers.

1095. Level 2 providers have responsibility for achieving the Code outcomes by complying with the rules in respect of the provision of the relevant phone-paid service. All network operators and Level 1 providers involved in providing phone-paid services must take all reasonable steps in the context of their roles to ensure the rules are complied with

1096. We signalled our intention in our discussion document to review the current categories of defined providers to phone-paid services and whether there was terminology which would provide a better description of the part they play in the value chain in support of the codified definitions.

Consultation proposals

1097. We proposed to amend the current terminology used for the two categories of providers to better reflect their roles in the provision of phone-paid services. We proposed to do this through introducing new terminology of intermediary providers and merchant providers.

1098. We asked the following question:

Q46: Do you agree with our proposals on amending our current terminology to better reflect the current phone-paid services value chain? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

1099. ***BT*** agreed with the proposal, commenting that the proposed terms are better descriptions and will be more easily understood by stakeholders. It asked for clarity on the position of all providers in the value chain, including third parties who interact with or facilitate players in the value chain in the provision of PRS, for example app stores and the value chains involved in the purchase of digital content from app marketplaces.

1100. ***Telecom2*** was very happy with this proposal, and said it is much clearer although it would have liked more parts of the value chain to be identified as well.

1101. ***VMO2*** agreed with the amendments to current terminology to clarify the current phone-paid service value chain subject to its concerns on the definition of a complaint.

Level 1 providers

1102. ***Donr Ltd*** had reservations about this proposal. It said it is happy for a Level 1 provider to become an intermediary, but there appears to be a lowering of requirements to become an intermediary. It argued that to become a true Level 1 provider (and not a sub-Level1 provider) requires significant investment and operational knowledge. By weakening the position of an intermediary, it was concerned that there would be a risk of allowing other parties to become de-facto Level1 providers and undermine the work done in recent years to strengthen the Level 1 provider role in the value chain. Its view was that an intermediary role should have a qualifying threshold, at least to the standard of current Level 1 providers such as itself, Fonix, Boku, DMB and Openmarket. It also noted that under draft Code paragraph D.1.7, an entity that is not a network operator can be both an intermediary and merchant provider. It strongly supported this remaining the case, as it significantly simplifies the regulatory process for charities.

1103. ***Fonix***, ***Infomedia*** and ***one other industry respondent*** agreed with our proposals on amending our current terminology to better reflect the current phone-paid services value chain.

1104. ***Mobile Commerce & Other Media Ltd*** said while the terminology appears to be appropriate, it could go further to clarify the others included in the value chain. It noted, for example, definition could be given around a third-party provider, third-party verification providers, refund providers etc. It also said intermediary providers should be split down as it is a very broad definition. For example, Level 1 providers and sub Level 1 providers work in many different ways and may not fit under one banner.

Trade associations

1105. ***aimm*** generally agreed with the proposals, as the descriptors seem to reflect better the responsibilities within the value chain.

Charities

1106. ***RSPCA*** and ***one other charity respondent*** agreed with our proposals on amending our current terminology to better reflect the current phone-paid services value chain.

Consumers and consumer advocates

1107. ***PSCG*** agreed with our proposals on amending our current terminology but observed that some participants in the value chain are still not included. It said consumers have great difficulty understanding the highly fragmented value chain involved in phone-paid services, but the proposed new terminology is more descriptive of the roles of these parties.

PSA's assessment of inputs received

1108. We are pleased the vast majority of respondents agreed with our proposal on terminology. We note the comments regarding the participants who sit outside the value chain. While we are sympathetic to the concerns raised, as such parties sit outside the regulated value chain, they are not covered by the PRS regulatory model and, therefore, we cannot regulate them. We think that the provisions within Code 15, especially around DDRAC are sufficient in terms of clarifying what parties within the value chain must do in respect of other parties (including third parties) they are contracting with. We do not accept that our proposals around changing the definition of Level 1 provider to intermediary in any way weakens the position of Level 1 providers/intermediaries as the definition within the draft Code paragraph (D.1.8) has been brought forward from Code 14 with only a change in terminology from "Level 1 provider' to 'intermediary provider".

Final decision

1109. Having considered stakeholders' responses, we have decided to implement the definitions of intermediary providers and merchant providers, and related provisions, set out at Code paragraphs D.1.7 - D.1.10.

Specified service charges and call durations

1110. We also proposed to retain the rules of the current notice of specified service charges and durations of calls within Annex 1 of the draft Code. Our assessment was that these rules remain fit for

purpose and effective in preventing consumer harm particularly relating to "bill shock" as they enable consumer spend control.

1111. We proposed one minor change regarding the cost point at which spend reminders are required to be sent to consumers using virtual chat services. In the current notice, it is a requirement that spend reminders must be sent as soon as is reasonably possible after the user has spent £10.22 inclusive of VAT. For the sake of consistency with the other specified charges in the annex which are not described in pounds and pence, we proposed that spend reminds are sent as soon as is reasonably possible after the consumer has spent £10 inclusive of VAT. We believed that this proposal should have little to no impact on providers operating virtual chat services as they should already have the necessary infrastructure in place to comply.

1112. We asked the following question:

Q47: Do you agree with our proposal to retain the rules of the current Notice of specified service charges and durations of calls within Annex 1 of Code 15? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

1113. ***BT*** agreed with the proposal.

1114. ***Telecom2*** agreed and said this is a useful document that provides clarity.

1115. ***VMO2*** agreed with the proposal to retain the rules of the current notice of specific service charges and durations of calls within draft Annex 1 of the draft Code.

Level 1 providers

1116. ***Fonix***, ***Infomedia*** and ***one other industry respondent*** agreed with our proposal to retain the rules of the current Notice of specific service charges and durations of calls within Annex 1 of the draft Code. Infomedia noted these rules are well understood in the industry but, with the processes in place to manage Code amendments, can be amended over time as required in response to changes in the marketplace/technology.

1117. ***Mobile Commerce & Other Media Ltd*** said the only issue with this particular aspect of the Code is that it could be outdated very quickly as it does not take into account inflation, nor does it consider the value of the cost or service it is related to either.

Trade associations

1118. ***aimm*** agreed with our proposal to retain the rules of the current Notice of specific service charges and durations of calls within draft Annex 1 of the draft Code.

Charities

1119. ***RSPCA*** and ***one other charity respondent*** agreed with our proposal to retain the rules of the current Notice of specific service charges and durations of calls within Annex 1 of Code 15.

Consumers and consumer advocates

1120. ***PSCG*** had no concerns about this proposal.

PSA's assessment of inputs received

1121. We note the widespread agreement to this proposal although we also note the need to prevent these provisions from becoming outdated. Under Code 15, we consider that we will have more flexibility in terms of keeping the Code updated. This is because our new Code amendment power (draft Code paragraphs 6.4.1 – 6.4.5) should enable us to make changes in a timely manner as and when required.

Final decision

1122. Having considered stakeholders' responses, we have decided to implement the proposals set out in Annex 1 of the draft Code which sets out our rules in relation to specified service charges and call durations.

Amendment of Code provisions

1123. Under Code 15, to facilitate more efficient amendments to specific Code provisions, we proposed to include an amendment power to enable the PSA to consult on amendments to a single or small number of provisions of the Code without the need for a consultation on the full Code.

1124. We said this represented a shift from Code 14, and one that would enable the PSA to propose amendments to discreet provisions of the Code more efficiently and enable stakeholders to respond to such consultations more speedily and effectively. We would still seek Ofcom's comment and approval on any proposed changes (similar to the process for Ofcom approving the PSA budget and business plan under Code 14).

1125. We asked the following question:

Q48: Do you agree with our proposal to include an amendment power in Code 15 to facilitate more efficient amendments to single or small numbers of specific Code provisions? Please provide an explanation as to why you agree or disagree.

Stakeholder comments

Network operators

1126. ***BT*** said it did not agree with the PSA's proposal for a broad amendment power in respect of updates or minor clarifications. It did not think that new amendments should be made without prior publication and an opportunity for industry to scrutinise changes within a reasonable timescale, for example 30 days. It also sought clarity on the discrepancy between the Code 15 consultation document (paragraph 542) which talks about a narrow consultation, and draft Code paragraph 6.4.5 which appears to remove the requirement for consultation and Ofcom approval under draft Code paragraphs 6.4.3 and 6.4.4. It also said that what might constitute a minor clarification or if the substance of a provision is altered is unclear, therefore it was of the view that public consultation on such changes is preferred.

1127. ***Telecom2*** said this would be a useful change provided that the changes are properly notified to industry and consumers and open to challenge if there is significant opposition.

1128. ***VMO2*** welcomed the ability to have flexible regulation ensuring timely and efficient responses to changes in the market. However, it disagreed with broadness of the amendment and the potential exposure to risk of inadvertently breaching amendments in the future.

1129. ***Vodafone*** did not agree that it is acceptable for the PSA to make "minor clarifications" to the code as proposed in draft Code paragraph 6.4.5 without prior consultation. It said if such a clarification is sufficiently important to be deemed to be beneficial or necessary it should be consulted upon accordingly or relevant guidance provided in conjunction with industry to ensure even the best intended changes have no unintended consequences.

Level 1 providers

1130. ***Donr Ltd*** said that it sees merit in this proposal but argued for a review point in the consultation process. It said it would like to see a review step included after the consultation closes and ahead of the final publication that gives parties the opportunity to highlight unintended consequences for resolution, ahead of final publication. In terms of the powers suggested to amend the code, it said that if a review point was included in this process then it would be more robust.

1131. ***Fonix*** agreed with our proposal to include a Code amendment power in Code 15.

1132. ***Infomedia*** said it strongly agreed with this proposal as it will greatly simplify compliance and deliver effective outcomes while reducing administrative burden, enabling the Code to remain relevant and effective. It said it would like to see that the medium in which the Code is published is optimised

for managing and presenting these changes to enable viewers to see which sections of the Code were in force on which date, when changes were implemented and so forth. It said this has been one of the key challenges with Code 14 and its associated guidance notes and other ancillary documents. It recommended the PSA looks at the presentation of content on legislation.gov.uk and in the FCA Handbooks.

1133. ***Mobile Commerce & Other Media Ltd*** said the PSA appear to be adding this into the Code so that they can make changes as and when they wish without the need to seek approval from Ofcom or consult with the industry on the matters it effects. It said there should be some procedure around the announcement of the proposed changes so that Ofcom, industry and consumers have a chance to have a say on it before it is changed.

1134. ***One industry respondent*** agreed with this proposal provided this is done in a clear and transparent manner.

Trade associations

1135. ***aimm*** noted that this process seems more efficient in dealing with issues that arise but sought clarity and assurance that these will be tracked, published, and then promoted to industry, and will not be backdated.

1136. ***FCS*** agreed with our proposals on general funding arrangements. It also agreed with our proposal to include a Code amendment power in Code 15. It argued that the ability for the PSA to amend and update Code 15 is required to keep pace with industry requirements and, in some cases, industry feedback.

1137. ***Mobile UK*** said it did not agree with draft Code paragraph 6.4.5 which allows the PSA to introduce changes to the Code as "minor clarifications" without prior consultation or due process. It said if a matter is of sufficient importance that a change to the text of the Code is required, due process should be followed. If "minor clarifications" are thought to be beneficial or necessary, some other route, such as guidance, should be found to deliver them.

Charities

1138. ***RSPCA*** and ***one other charity respondent*** agreed with our proposal to include a Code amendment power in Code 15.

Consumer and consumer advocates

1139. ***PSCG*** agreed that the Code needs to be flexible and it would prefer to see no "exceptions". It recognised that there may be services for which the current Code does not work, but which are innovative and have merit. In these circumstances, it said it would much prefer to see the Code amended to accommodate the innovation.

PSA's assessment of inputs received

1140. We note that while a number of respondents welcomed the overall approach to the Code amendment power, some specific concerns were raised in relation to our proposals relating to draft Code paragraph 6.4.5. For the avoidance of doubt, this provision is in relation to "changes in applicable law or where minor clarification is required which does not alter the substance and meaning of a provision". In relation to "changes in applicable law" a recent example of this would be the changes to the Code (i.e. references to EU law) that ought to have been made to Code 14 as a result of changes to the UK law following Brexit. In terms of "minor clarifications" this would apply where typographical errors are spotted or we discover in the fullness of time through, for example stakeholder feedback, that any provision of the Code proves to be unclear, ambiguous or confusing, and that it can be resolved through small tweaks to make the language clearer. We also note that the draft Code ensures full transparency through the requirement in paragraph 6.4.5 for us to publish details of any such changes made.

1141. We also note that a number of respondents expressed concern that this would mean that proposed new amendments could be made without prior publication and an opportunity for industry to scrutinise changes (including notification to Ofcom). To be clear (and having addressed the separate issue of minor clarifications and legislative updates above), this is not the case and draft Code paragraphs 6.4.3 and 6.4.4 are very clear in this regard. In particular, draft Code paragraph 6.4.3 says

that before any such Code amendment can be made, the PSA "must publish its amendment proposals along with written reasons and any relevant evidence for public consultation and scrutiny". Also, and in relation to Ofcom's involvement, draft Code paragraph 6.4.4 says that "having considered any comments received following a consultation conducted in accordance with paragraph 6.4.3 above, the PSA will review its amendment proposals and submit them to Ofcom for comment and approval."

1142. In light of these very clear safeguards in terms of how we would use our Code amendment powers, we do no not agree that this new power will have the effect, as some respondents suggested, that we will be able to make substantive changes without consulting first with relevant stakeholders (including industry) and seeking Ofcom approval to the proposed changes.

Final decision

1143. Having considered stakeholders' responses, we have decided to implement the proposals set out in draft Code paragraph 6.4 which sets out our proposed power to amend Code provisions.

Other issues raised during consultation

1144. In addition to the specific questions we asked as part of our consultation we also received some feedback in relation to other issues pertinent to Code 15.

Regulatory scope considerations

Stakeholder comments

Network operators

1145. ***Vodafone*** expressed concern that draft Code paragraphs 6.2.13 and 7.5.1 may be read to suggest that own-portal value-added services are being inadvertently caught in the draft Code. As such services fall outside the CPRS definition, it sought confirmation that the inclusion of own-portal services is not intended and, specifically, that no aspect of non-PRS services will be subjected to any aspect of the Code requirements.

Trade Associations

1146. ***aimm*** suggested that the Code should be mindful of the language used throughout, which did not appear in some areas to cater for app stores or direct carrier billing.

1147. ***Mobile UK*** also expressed concern relating to own-portal services and sought confirmation that it is not the intention to bring such services within Code 15.

PSA assessment of inputs received

1148. We have carefully considered comments received in relation to regulatory scope.

1149. On the issue of own-portal services, it is important to be clear that the scope of regulated PRS is set by Ofcom (through the PRS Condition) and not by the PSA. Ofcom de-regulated own-portal services back in 2012 through excluding such services from the definition of CPRS by inserting "(other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) into the PRS Condition"[14]. This exclusion remains in place today. We can, therefore, confirm that there is no intention, nor is it legally possible, to re-introduce own-portal services within the scope of Code 15.

1150. In terms of the language use and how this applies to both app stores and direct carrier billing, we do not agree with these points. The language we have used is intentionally focused on phone-paid services and, therefore, should be applicable to all relevant service types and any company who is providing a relevant service in this sector, irrespective of where they sit in the value chain.

14 The current PRS Condition is the one which introduced the ICSS modification in 2018 – see https://www.ofcom.org.uk/__data/assets/pdf_file/0015/131046/Statement-Review-of-the-premium-rate-services-condition.pdf

9. Impact assessment

Introduction

1151. In this section, we set out our assessment of the impact of the changes which we have set out in this document, taking account of comments received by stakeholders. In doing so, we have sought to assess costs and benefits from the following perspectives:

- the impact on industry and the wider market
- the impact on consumers
- the impact on the PSA.

1152. As we explained in our consultation document, given that a number of the proposals we are consulting on have not been tested, we considered it is more appropriate to provide a qualitative assessment of the potential costs and savings at this stage. We sought to identify the key impacts, both costs and benefits, but welcomed comments from stakeholders on our assessment and, in particular, any additional information from them in relation to possible impacts. We wanted to take account of any feedback received to inform our final decisions on Code 15 to ensure that they are based on a sound understanding and accurate assessment of all available information and evidence and informed by stakeholder input.

1153. We also included an Equality Impact Assessment (EIA) to assist us in making sure that we are meeting our responsibilities in fully taking account of the interests of consumers regardless of their background or identity.

Main changes

1154. The main changes we consulted on as part of our proposed development of the new draft Code was that we want to deliver a Code that:

- introduces Standards in place of outcomes
- focuses on the prevention of harm rather than cure
- is simpler and easier to comply with
- enables smarter enforcement.

1155. We discuss these further below:

Introduces Standards in place of outcomes

1156. Code 15 will set minimum consumer-facing and organisational Standards for providers operating in the market to meet.

Benefits

1157. We believe Standards should be clearer and easier for industry to implement and set minimum Requirements for providers to adhere to that meet consumer expectations, while retaining the space for innovation in the interests of consumers.

1158. Our assessment of the key benefits is that Standards will provide:

- greater clarity of what is expected from industry in line with best practice in the phone-paid services market and other relevant adjacent markets
- a more effective way of meeting consumer expectations, leading to increased trust and confidence in the market
- greater flexibility in how regulation is applied, including the ability to consider alternative means to achieve the regulatory Standards, such as exemptions from certain Code Requirements, for those organisations who commit to meeting the agreed Standards.

1159. Our assessment, therefore, is that Standards will benefit industry, consumers and the PSA, as follows:

- industry will benefit from more clarity and certainty about what they need to do as the regulatory system will become more predictable. A stable regulatory environment should enable cost savings in terms of time and effort in product and/or service design. A common criticism of the current regulatory model is that it has tended to be largely reactive and responsive when things go wrong, either through policy or enforcement-based interventions. The concern is that this has led to unnecessary cost and uncertainty, and a relatively complex regulatory system, which has built up over time.

- consumers will benefit from the fact that there will be greater clarity in terms of our Requirements and expectations of industry, which should lead to better consumer outcomes and this should potentially lead to a reduction in harmful practices. This will mean consumers are spending less time and effort in having to raise complaints and seek redress and should lead to greater trust and confidence in phone-paid services.

- the PSA will benefit from the fact that there will be greater clarity in terms of our Requirements and expectations of industry, as there will be less opportunity for significantly different interpretations by organisations as to how best to achieve the desired outcomes. A key benefit of this is that we will be less reactive going forward and can focus our time and effort into stopping harm from occurring in the first place.

Costs

1160. We do not expect this change to have significant cost impacts. We have identified the following in terms of key potential likely areas of costs to industry:

- **Extending MFA to all services which are accessed fully or in part via an online gateway.** We currently require MFA for subscription services, online competition services, online adult services, society lotteries and recurring donations through special conditions. We are extending MFA to all services which are accessed fully or in part via an online gateway. This may require additional systems costs for those providers who do not currently provide MFA as part of their sign-up process. That said, our view is that this will yield significant benefits through a more reputable marketplace and increased consumer trust and confidence in that market. We have seen that MFA has greatly reduced complaints to us and to industry for subscription services. It will also lead to enhanced consumer protection as there should be less opportunities for consumers to be victim of "bill shock". It will also provide a level playing field for online-based services, including more strongly aligning the consumer purchasing experience of phone-paid services with other digital payment mechanics, such as PayPal, Apple and Google Pay where MFA is widely used.

- **Requirement for annual subscription reminders for all subscription services except recurring donation services**. We are not looking to introduce any Requirements that are unfamiliar to providers. We have listened carefully to stakeholder arguments that requiring a valid opt-in every 12 months would be disproportionate in relation to other payment mechanisms. In view of our assessment of the effectiveness of existing protections, we have decided to modify our proposals and align them with proposals that BEIS is making more generally for subscriptions – namely a requirement to notify consumers that a subscription is due to auto-renew or is continuing and provide details of how to opt out. We consider this will achieve a better balance of improving overall consumer awareness of subscription services while taking account of the requirements of effectiveness, balance and proportionality.

- **Consumer vulnerability.** We are introducing a new vulnerable consumers Standard which builds on existing Requirements, including appropriate age verification and children's services. We, therefore, do not consider this an additional cost to industry. While we are proposing a number of new Requirements, as set out in this document, these are measures which, in our view, should form part of providers' policies and procedures which they already have in place to take account of the needs of vulnerable consumers in order to reduce the risk to them and ensure their fair treatment. Our view, therefore, is any additional costs should be limited. We also note that our proposals also follow a similar approach to that of other regulators which should mean there are cost savings and efficiencies to be achieved for industry. This is also an area where we consider there may be value in us working directly with industry to help them put good policies and procedures in place, and to ensure that ongoing costs are kept to the minimum necessary.

- **Customer care (including complaints handling and refunds).** These Requirements are broadly

adapted from Code 14, including our updated refunds guidance. Given this, we would expect any additional costs arising from this change to be limited. A key change relates to the need to ensure that customer care facilities must be made available to consumers during business hours. This may incur additional costs for those providers who do not currently provide customer care facilities for these hours. These costs may be increased where customer care facilities are currently provided by overseas providers in different time zones and with different public holidays. That said, it is our view that establishing more effective and timely (including transparent and accessible) customer care procedures that meet consumers' expectations should have the benefit of reducing complaints, including complaints to us, about industry complaint handling. This should drive additional cost savings and efficiencies.

- **Systems.** These Requirements have been largely adapted from current published guidance under Code 14. We therefore consider that providers will be familiar with the concepts and expectations regarding consent to charge and payment platform security and, therefore, we do not consider that these changes should result in significant additional costs to providers. In particular, we note that the MNOs have already updated their accreditation Standards to include most of the recommendations made by Copper Horse. The two new Requirements which we are introducing, on ensuring platform security test results are assessed by suitably qualified or experienced staff, and implementing a co-ordinated vulnerability disclosure scheme, were both recommendations from the Copper Horse report. These changes may incur costs as providers would need to have suitably qualified or experienced staff in place to do this, but we would expect that many should already have qualified and experienced staff in place to undertake this type of activity, meaning any potential costs would be minimised. In our view, however, this is a pre-requisite for the provision of payment platform services to consumers and is, therefore, a legitimate and necessary cost of business in providing this type of service.

1161. We asked the following question:

Q49: Are there other impacts which we have not considered in relation to our proposal to move from a regulatory approach based on outcomes to one based on Standards? If so, please provide appropriate evidence of the likely impact of the change.

Stakeholder comments

Network operators

1162. ***BT*** said it had no further comments.

1163. ***Telecom2*** said it could not think of any other impacts and is, in principle, very happy with this proposal. It said it will be able to comment more when the guidance and other supporting documentation is available.

1164. ***VMO2*** requested that the PSA consider the practicalities of implementing aspects of the new Code across the value chain and that the impact is likely to be different for mobile operators compared to other parts of the value chain and vice versa. It said it is important the new Code does not impose processes that are too burdensome to promote growth in the market.

Level 1 providers

1165. ***Donr Ltd*** said that while happy with the move to a standards-based code and recognising that charity donations and lotteries are of a high standard and not an area for concern, it feels that draft Code paragraph 6.2.7 is unfair for charities. This requires a network operator to withhold charity donations for 30 days, before payment can be made to an intermediary and, in turn, the charity. Given charities can be fundraising for time sensitive appeals and to bring PRS payments in line with other mechanics such as card payments or direct debit, it wanted charity donations and society lotteries to be exempt from this Requirement.

1166. ***Mobile Commerce & Other Media Ltd*** said this standard does not reflect a change to one based on standards. The Standards stated are outcomes, and the requirements appear to be indicative behaviours. It said this is a prescriptive code, but only one way. If the PSA are setting standards for the industry, then it must be willing to follow the Standards themselves.

Trade associations

1167. ***aimm*** said that to avoid lengthy duplication of its response covering the impacts that have not been considered, its answers to questions 13 - 32 should apply and be given due consideration, along with the impacts which have been detailed and the points required for clarification.

Charities

1168. ***RSPCA*** said there were no other impacts which we have not considered.

1169. ***One respondent*** said that while it welcomes the PSA's review of the Code and is supportive of many of the initiatives within the draft Code, it strongly objects to the proposal for annual re-opt-in.

Consumers and consumer advocates

1170. ***PSCG*** said it was concerned that the inability of PSA to enforce effectively against MNOs makes a nonsense of the intention to enforce high standards of DDRAC. It said it is the contractual relationship between MNOs and payment intermediaries that has led to much consumer harm in recent years.

PSA's assessment of inputs received

1171. We note that stakeholders were broadly happy, in principle, in terms of the impacts considered in moving to a standards-based approach. Moreover, where concerns were raised in relation to additional impacts, we note that we have addressed a number of these already. These include the proposed requirement for annual re-opt ins for subscription services, exempting charities from PSA regulations and the role of MNOs as part of DDRAC Requirements. We also note one respondent argued the new Code is overly prescriptive. We do not agree with these points as already addressed in this document.

1172. We have carefully assessed all comments received and, having done so, we remain of the view that we do not expect this proposed change to have significant cost impacts. We recognise that the introduction of annual re-opt-ins for subscription services could have had cost implications for the industry as this may have required providers to amend their systems. We were not provided with specific evidence on implementation costs. However, since we have now decided not to proceed with the annual re-opt-in Requirement, it strengthens our view that the proposed changes outlined above will not have significant cost impacts for industry. Indeed, we would expect that the Requirement for annual subscription reminders will have minimal impact. We are satisfied for now that measures in place provide sufficient consumer protection and so we do not expect that there will be an increase in consumer detriment or loss of benefit from reduction in consumer detriment as a result of this decision.

Focuses on the prevention of harm rather than cure

1173. We want to be a more proactive regulator that seeks to address potential harm before it emerges.

Benefits

1174. We believe that an increased focus on prevention of harm rather than cure will enable us to work with providers to build in best practice and compliance in the first place to avoid harm, where possible, and deliver services that consumers trust and enjoy. Our current approach to regulation allocates significant resources to addressing harm once it has occurred. We believe this approach benefits neither consumers, industry nor the PSA.

1175. Our assessment, therefore, is that moving to a more preventative approach will benefit industry, consumers and the PSA, as follows:

- industry will benefit as this will lead to enhanced consumer trust and confidence in services which helps drive market growth opportunities. Industry will also benefit from spending less time and effort in having to deal with complaints and redress claims which will drive cost savings and efficiencies. It should also reduce the need for enforcement action where issues are picked up much earlier and resolved.

- consumers will benefit from increased protection, as an emphasis on the prevention of harm and ongoing supervision, should limit the opportunity for consumer harm to occur. This will mean

consumers are spending less time and effort in having to raise complaints and seeking redress and should lead to greater trust and confidence in phone-paid services. This should provide benefits to market health, integrity and reputation and consumer confidence.

- the PSA will benefit from having a more comprehensive understanding of phone-paid service providers and the services that are offered to consumers. This will help us better protect consumers by taking proactive regulatory action that is proportionate, efficient, timely, targeted and effective. It will also mean we can target our time and effort into stopping harm from occurring in the first place rather than dealing with issues reactively after the harm has occurred.

Costs

1176. We do not expect this proposed change to have significant cost impacts. We have identified the following in terms of key potential likely areas of costs to industry:

- **Enhanced notification through the registration scheme**. We will carry out checks on PRS providers through an enhanced registration system. This will enable us to collect and verify essential information about phone-paid service providers and their services. This largely builds on existing Code 14 Requirements albeit with some new Requirements, including information relating to relevant contact details of individuals in the organisation, relevant numbers and access or other codes as well as the identity of other providers involved in the provision of the service. We expect there will be some additional costs for industry in terms of time and effort in collecting and reporting information, including potentially having to recruit new staff where these new Requirements cannot be fulfilled with existing staff. However, in the main, we would expect that this type of information will be readily available so any associated direct costs of putting in place systems or spending money to be able to collect the information, should be limited. In addition, as we do currently, we will continue to work with industry in supporting them in meeting these new Requirements which should minimise costs to them.

- **Strengthened DDRAC Requirements.** We are putting in place more stringent DDRAC Requirements for phone-paid service providers to ensure that all such providers undertake thorough DDRAC. While a lot of these Requirements build on existing DDRAC Requirements from Code 14 (including published guidance), we are introducing some new Requirements, including the need to have senior level sign-off for DDRAC, ensuring that providers are able to terminate contracts with third parties in defined circumstances, ensuring DDRAC responsibilities flow down the value chain and making available to us, on request, information relating to DDRAC. These are new Requirements and are likely to result in some additional costs to providers. For example, as above, the Requirement for senior-level sign off may lead to potential extra cost if the role cannot be fulfilled with existing staff. This may include training costs. However, our view is that any such costs are likely to be minimised as many providers should already have effective DDRAC processes in place (including many of these proposed new Requirements) and, in these cases, we would expect any additional costs to be limited and that, to the extent there are additional costs, this would fall on those providers who currently follow poor DDRAC practices.

- **New supervision powers.** We will carry out ongoing oversight of phone-paid service providers and services to achieve and maintain compliance with the new draft Code to prevent, or reduce, actual and potential harm to consumers and the market. This should enable us to engage more proactively with industry. As we have already set out, we are looking to minimise the potential for additional costs by ensuring that our proposed supervisory regime is designed to enable flexibility so we can target our supervisory role where it is most needed. We intend to monitor compliance through various information-gathering activities, including consumer complaints, audits, data reporting and skilled persons reports. We also intend to apply these new powers in a targeted fashion to ensure that costs, to both us and the industry, are minimised to the greatest extent possible.

  However, we recognise that there are likely to be costs arising from our new supervisory function including, for example, where we require audit reports to be submitted, either annually or periodically, periodic reporting of data and skilled persons reports. Our view is that these costs should be largely offset as we have designed these new powers to enable us to deal with compliance concerns earlier and more speedily, and without moving to formal enforcement. A key benefit of this to both us and industry, in particular, is that we will be less reactive going forward, and can focus our time and effort into stopping harm from occurring in the first place.

1177. We asked the following question:

Q50: Are there other impacts which we have not considered in relation to our proposal to focus on prevention of harm rather than cure? If so, please provide appropriate evidence of the likely impact of the change.

Stakeholder comments

Network operators

1178. ***BT*** said it had no further comments.

1179. ***Telecom2*** said it is disappointed that there is no mention of the data submitted in the registration process being verified by the PSA. It said it would have also liked the role of consumer's phone service providers to be addressed in the Code.

1180. ***VMO2*** welcomed a proactive approach to preventing harm but said this can only be effective if the value chain is sufficiently informed, and that the data presented to or found by the PSA is shared appropriately to enable intermediary and merchant providers to rectify any issues found.

Level 1 providers

1181. ***Donr Ltd*** strongly suggested the PSA review the flow of funds to ensure all parties of the value chain keep funds ring fenced from operational expenditure. In the case of a charity, this would prevent charity donations being lost in the event of an MNO or intermediary insolvency.

1182. ***Mobile Commerce & Other Media Ltd*** said prevention of harm starts with ensuring adequate due diligence is done to ensure those entering the market are reputable providers and will not bring the industry into disrepute. It said the PSA should be increasing their own requirements on DDRAC to ensure this and set standards for them to follow.

Trade associations

1183. ***aimm*** noted the PSA's recognition that it can do more as a regulator to support the due diligence and security checks already undertaken by MNOs in the market but was disappointed that the PSA have decided not to verify the enhanced registration. It also noted there is no future proofing which industry requested at the MFA stage. It is very prescriptive and as such may soon become outdated.

Charities

1184. ***RSPCA*** said there were no other impacts which we have not considered.

1185. ***One charity respondent*** referred to its responses to questions 17, 18 and 49.

Consumers and consumer advocates

1186. ***PSCG*** appreciated the wish to prevent harm rather than cure it. However, it said it is important to note that the industry is infiltrated by a number of relatively small companies intent on profiting from cynical exploitation of the vulnerabilities of the phone payment mechanisms. It applauded the fact that recent regulatory changes have dramatically reduced the incidence of harmful services within the UK. However, it noted that some of these companies continue to operate in other jurisdictions like Ireland and Denmark and will undoubtedly seek to re-enter the UK market to exploit any perceived weaknesses.

PSA's assessment of inputs received

1187. We note that stakeholders were broadly happy with the impacts considered in relation to our proposal to focus on prevention of harm rather than cure in principle. In terms of issues related to additional impacts not considered, we note that we have already addressed a number of these. These include the role of the PSA in verifying registration information, the importance of sharing data appropriately to enable intermediary and merchant providers to rectify any issues found, and the issue of future-proofing at the MFA stage.

1188. We have carefully assessed all comments received and, having done so, we remain of the view that we do not expect this proposed change to have significant cost impacts.

Is simpler and easier to comply with

1189. We want regulation to be as simple and easy to implement as possible, therefore enabling legitimate services to flourish in the consumer interest.

Benefits

1190. We believe a new draft Code that is simpler and clearer for industry to comply with will drive benefits, including enabling legitimate services to flourish in the consumer interest. This is because a simplified regulatory system will be clearer and easier for industry to implement, while retaining the space for innovation in the interests of consumers.

1191. Our assessment of the key benefits is this will provide:

- increased certainty to industry stakeholders in terms of our Requirements and expectations through the establishment of regulatory Standards
- making it easier to update certain Standards in response to market developments and changes in best practice
- the potential for more flexible regulation, including the ability for regulated parties to achieve the regulatory Standards through alternative means, where regulated parties commit to meeting the agreed Standards.

1192. Our assessment, therefore, is that making regulation simpler and easier to comply with will benefit industry, consumers and the PSA, as follows:

- industry will benefit from a simpler and clearer regulatory regime to comply with, including increased certainty in terms of our Requirements and expectations. This is because a simpler structure reduces the time and effort needed to understand the Requirements of the Code. Also, we would expect that it reduces the need for ongoing changes to policies and procedures such as having to meet the requirements of new special conditions. This should reduce the amount of new costs associated with these types of fixes.
- consumers will benefit from increased protection, as ensuring regulation is simpler and clearer should limit the opportunity for consumer harm to occur. This should provide benefits to market health, integrity and reputation and consumer confidence.
- the PSA will benefit from increased compliance levels from industry, meaning there will be fewer cases where formal enforcement action is needed, which incurs costs for both the PSA and industry. This will enable the PSA to target time and efforts more effectively, including being more focused on stopping harm from occurring in the first place.

Costs

1193. We do not expect this change to have significant cost impacts. We recognise there will be one-off familiarisation and implementation costs associated with transition from one Code to another. In the main, however, and given that an objective of our Code 15 review is to provide a simpler Code and make compliance easier, we would expect any costs to be off-set in the future, and lead to reduced costs for industry and more effective deployment of staff and resources for the PSA, leading to a more effective (and value-for-money) regulatory model.

1194. We asked the following question:

Q51: Are there other impacts which we have not considered in relation to our proposal to move to a new Code which is simpler and easier to comply with? If so, please provide appropriate evidence of the likely impact of the change.

Stakeholder comments

Network operators

1195. ***BT*** agreed with the PSA's steps to simplify the relatively complex and somewhat piecemeal structure of

the existing code with supporting special conditions, exemptions and guidance which has built up over time. A central rulebook will be an easier point of reference to navigate.

1196. ***Telecom2*** hoped that the new code will be simpler and easier to comply with but felt that much depends on information which has yet to be published.

1197. ***VM02*** said that as the guidance and best practice information is not currently available, it cannot comment on the full impacts of the proposal to move to the new Code. It welcomed a move to simpler and easier to comply with regulation.

Level 1 providers

1198. ***Donr Ltd*** noted that, on a technical point, the definition for a charity is incorrect in D.2.58 (and elsewhere that makes the same references). It noted this references charities as being organisations registered with the Charities Commission in England and Wales, Northern Ireland and Scotland (OSCR). While correct, a charity can also be formed by an Act of Parliament or is an Excepted Charity or Exempted Charity under the legislation that creates a charitable organisation. It said that by defining this correctly in Code 15, it can bring certainty to organisations such as National Gallery, Church of England and the various Scouts and Guides groups across the country who all sit within the full definition of a charity.

1199. ***Mobile Commerce & Other Media Ltd*** said the draft Code does not appear simpler and easier to comply with. It said it is 104-pages long, almost double the length of Code 14. It also noted there are multiple Requirements within the Code which are already covered under law, and therefore are not necessary in the draft Code.

Broadcasters

1200. ***Global*** argued this new Code seems to be the opposite of "simplification" and is probably the most complex Code it has ever had. It said it questions whether this is actually in the consumer's interests and whether it is clear, understandable to the average "man on the street", or whether it is overly complex and exposes holes for picking.

Trade associations

1201. ***aimm*** said it is unable to state conclusively that this Code will be easier to comply as there is as yet no guidance or best practice supporting documentation. It also noted the proposed duplication of regulation for the proposal around 12-month re-authentication of subscription users, when this regulation is not confirmed is neither simple nor easier to comply with. It said the PSA state the network operator's codes of practice are not enough to regulate industry but noted that network operators have led the security framework and consent to charge pieces that the PSA have now codified.

Charities

1202. ***RSPCA*** said there were no other impacts which we have not considered.

Consumers and consumer advocates

1203. ***PSCG*** said there were no other impacts which we had not considered in relation to our proposal to move to a new Code which is simpler and easier to comply with.

PSA assessment of inputs received

1204. We note that a majority of stakeholders were broadly happy with the impacts considered in relation to our proposal to move to a new Code which is simpler and easier to comply with. Two respondents did not agree that the draft Code met the aims of simplification and that the Code is overly complex. As already discussed, we do not agree. We also note that the issue of annual re-opt-in for subscription services was raised again. We have already addressed this. One respondent noted there are multiple requirements within the code which are already covered under law. Again, we have addressed this point.

1205. One respondent raised the issue of the definition of charities and that it does not capture a wide range

of other charities recognised by various legislation. We agree with these comments and have decided to amend our definition of recurring donation services to address stakeholder comments relating to the types of charities that fall under this definition. We have amended the definition of recurring donation services in the draft Code to cover recurring donations to an institution that falls within the definition of the Charities Act 2011, Charities and Trustee Investment (Scotland) Act 2005, Charities Act (Northern Ireland) 2008, or any successor legislation, or any other relevant UK legislation in which a charity is defined. This extends the scope of charities that fall under the definition of recurring donation services than was the case previously and aligns it with the statutory definitions of a charity.

1206. We have carefully assessed all comments received and, having done so, we remain of the view that we do not expect this proposed change to have significant cost impacts.

Enables smarter enforcement

1207. We are introducing a number of changes to address various issues which we have identified that undermine the effectiveness of our investigations and sanctions processes and procedures.

Benefits

1208. The main changes we are introducing are under Code 15 to achieve this include the following:

- a new approach to engagement and enforcement
- an enhanced settlement process
- strengthening the existing interim measures regime
- a more efficient adjudicative regime
- strengthening the test for prohibiting individuals
- strengthening and expanding our information gathering powers.

1209. Our assessment is that our proposed new engagement and enforcement approach will provide the following benefits:

- a clearer framework around informal resolution which will provide more flexibility for us in terms of how we deal with any compliance concerns, and allow the opportunity for more cases to be dealt with through informal resolution rather than formal enforcement action
- earlier publication of cases, including publication of warning letters and action plans
- widening the circumstances under which we can issue enforcement notices, including without the need for prior engagement, where an issue is sufficiently serious to warrant enforcement action
- creating an enhanced settlement process that provides much clearer and more quantifiable incentives for early settlement
- broadening the circumstances in which we can put interim measures in place, to include during our enquiries or engagement with providers
- requiring monies which are subject to a withhold direction to be paid over to us as a security against a fine or administrative charge that may be imposed
- introducing a new single decision maker as an alternative to the full Tribunal for more straightforward cases, meaning cases can be dealt with more efficiently
- strengthening the test for prohibiting individuals, including expanding the test for prohibiting relevant individuals where they have failed to take reasonable steps to prevent breaches
- strengthening and expanding our information gathering powers (including for the purpose of supervision/engagement and enforcement).

1210. Our assessment, therefore, is that this will benefit industry, consumers and the PSA, as follow:

- industry will benefit from the fact that our proposed new approach is intended to deal with

compliance concerns earlier and quicker, and without moving to formal enforcement. This should, therefore, reduce the potential for costs for industry which are associated with investigations. This includes the proposal to introduce an enhanced settlement, which should also lead to additional cost savings and efficiencies for industry who may be subject to formal enforcement action.

- consumers will benefit from increased protection, as our proposed new approach should limit the opportunity for consumer harm to occur as well as stopping consumer harm more quickly, where it happens. This should provide benefits in terms of market health, integrity and reputation and consumer confidence.
- the PSA will benefit from increased compliance levels from industry, meaning there will be fewer cases where we have to move to formal enforcement action, which incurs costs for both us and industry. This will enable us to target our time and efforts more effectively, including being more focused on stopping harm from occurring in the first place. We will also benefit from an enhanced settlement process as this should mean we will be able to close investigations more quickly than is currently the case.

Costs

1211. We do not expect these changes to have significant cost impacts. In particular, we note that a primary objective of these changes is to provide a clearer framework around informal resolution which currently sits outside Code 14. This should benefit industry, consumers and us, including the fact that we will be able to be more responsive to addressing issues, so that consumer harm can be identified, and stopped, much more quickly.

1212. We would also expect that some of the other changes, including enhanced settlement and a more efficient adjudication model, such as having single legally qualified decision makers, should drive cost savings rather than additional costs. There may be some additional costs associated with strengthening our information gathering powers. But again, we would expect these to be largely limited as these are more to do with our ability to rely on information requested by being able to request such information through formal powers rather than looking to issue more requests for information.

1213. We asked the following question:

Q52: Are there other impacts which we have not considered in relation to our proposed changes to our investigations and sanctions policies and procedures? If so, please provide appropriate evidence of the likely impact of the change.

Stakeholder comments

Network operators

1214. ***BT*** said it had no further comments.

1215. ***Telecom2*** said the biggest omission is the lack of control of PSA's part in investigations. It said without timescales investigations will still be able to drag on, increasing consumer harm, delaying resolution and causing uncertainty for providers. It also felt that fines in particular are too high and this is not addressed.

1216. ***VMO2*** had no further information on impacts to the proposed changes to the investigations and sanctions policies and procedures.

Level 1 providers

1217. ***Mobile Commerce & Other Media Ltd*** said the PSA seems to be introducing more powers for them to intervene with providers, and increased sanctions, but do not seem to be increasing their requirements for verification of people entering the market, which would negate the need for increased investigation and sanction powers.

Trade associations

1218. ***aimm*** said to avoid lengthy duplication of its response covering the impacts that have not been

considered, its answers to questions 33 to 44 should apply and be given due consideration, along with the impacts it has detailed and the points required for clarification.

Charities

1219. ***RSPCA*** said there were no other impacts which we have not considered.

Consumers and consumers advocates

1220. ***PSCG*** said that there were no other impacts which we had not considered in relation to our proposed changes to our investigations and sanctions policies and procedures.

PSA's assessment of inputs received

1221. The majority of respondents agreed with our assessment of the impacts considered in relation to our proposed changes to our investigations and sanctions policies and procedures. In terms of other points raised, two respondents raised the issue of PSA adopting a greater role in terms of verification of registration information which we have covered above (see paragraphs 678 and 679).

1222. We have carefully assessed all comments received and, having done so, we remain of the view that we do not expect this proposed change to have significant cost impacts.

Equality impact assessment

1223. This section provides our assessment of our proposals set out in this document in the context of an equality impact assessment (EIA). EIAs assist us in making sure that we are meeting our responsibilities in fully taking account of the interests of consumers regardless of their background or identity.

1224. In this section, we are, therefore, considering the impact of our proposals in relation to people with the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation[15].

1225. Overall, our assessment is that the changes which we are introducing should have a positive impact on people with protected characteristics. We would expect that consumers with protected characteristics will benefit to the same extent that consumers in general will benefit. We do not believe that our proposals would have any detrimental impact on people with protected characteristics. In particular, we note:

- the change in regulatory approach to one which focuses on the prevention of harm before it occurs will have a positive impact on all consumers, including those with protected characteristics, since it should raise industry standards and reduce levels of consumer detriment. This includes detriment suffered by consumers with protected characteristics. For example, we are strengthening the Requirements around registration as well as DDRAC to deter illegitimate providers intent on causing harm from entering the market. Our new supervisory approach will also enable us to be more proactive and identify harm pre-emptively, which could include harm specifically related to protected characteristics.

- many of our changes should improve the overall reputation of the industry. Improving the reputation of the industry should attract more reputable players who seek to innovate in the interests of all consumers into the market. This will increase the availability of good products and services to consumers, including those consumers with protected characteristics.

- we are including a Vulnerable consumers Standard which will bring together all the Requirements in relation to consumer vulnerability into one place. We consider this will provide greater simplification, clarity and consistency in relation to all vulnerable consumers, including those with protected characteristics. This Standard will help to ensure that providers are taking the necessary steps to protect vulnerable consumers, including those with protected characteristics.

1226. We asked the following question:

15 As defined by the Equality Act 2010

Q53: Do you agree with our assessment on the impact of our proposals in relation to equality? Do you have any further information or evidence which would inform our view?

Stakeholder comments

Network operators

1227. ***BT*** agreed that the proposals should not have a detrimental impact on people with protected characteristics.

1228. ***Telecom2*** said there are many examples of inequality given in its responses which will deter entry into the market.

1229. ***VMO2*** agreed with the provisional assessment on the impact of the proposals in relation to equality.

Level 1 providers

1230. ***Infomedia*** and ***one other industry respondent*** agreed with our assessment on the impact of our proposals in relation to equality.

Trade associations

1231. ***aimm*** agreed that it is right and proper to safeguard those with protected characteristics.

Charities

1232. ***RSPCA*** and ***one other charity respondent*** agreed with our provisional assessment on the impact of our proposals in relation to equality.

Consumers and consumer advocates

1233. ***PSCG*** agreed with our provisional assessment on the impact of our proposals in relation to equality.

PSA's assessment of inputs received

1234. We note that respondents were broadly in agreement with our assessment on the impact of our proposals in relation to equality.

10. Next steps

Implementation period

1235. In the consultation document we recognised the need for an implementation period to enable firms to bring their policies, procedures and practices into line with any changes set out in Code 15. Our view was that an implementation period of between three to six months ought to be sufficient to allow industry to make all the necessary changes to their processes and procedures to ensure compliance with Code 15.

Commencement and transitional arrangements

1236. Whenever we introduce a new edition of the Code, it is necessary to set out the date on which the new Code will commence. It is also important to be clear about the transitional arrangements which will exist where an investigation commences while one Code is in force but does not finish until after the new Code has superseded the previous one.

1237. Following a similar approach to Code 14, we proposed to include our proposed commencement and transitional arrangements in Code 15 (draft Code paragraphs 1.8.1 and 1.8.2). We proposed that from the commencement date of Code 15 that section 5 of Code 15 and any published procedures, as well as draft Code paragraph 6.1.1 (where it applies to engagement and enforcement) would automatically apply to all existing complaints and investigations. This would include all breaches raised under Code 14.

1238. We asked the following question:

Q54: Do you agree with our proposal to set out transitional arrangements that allow the new Code procedures to apply from the commencement date to all investigations and/or complaints or monitoring which commenced under Code 14?

Stakeholder comments

Network operators

1239. ***BT*** agreed in principle with our proposal on transitional arrangements. BT trusted that we would take a sensible and pragmatic approach to any investigations or complaints during the transition period from Code 14 to Code 15 and wanted confirmation that providers would not be in a worse position as a result. BT expressed some concerns that the proposed three to six- month implementation period was not sufficient and proposing that a 12-month implementation period was more appropriate to allow for appropriate resourcing, systems and operational changes.

1240. ***Telecom2*** did not believe this is an equitable way of dealing with investigations even if there is a precedent. It said sanctions should be based on those in force at the time of the alleged poor practice.

1241. ***VMO2*** agreed in principle, but said it needs to be made absolutely clear that contraventions which occurred under Code 14 would be treated as such and not under the new Code 15 (excluding enforcement guidelines), and therefore clarity around what is meant by "procedures" is required in the statement.

1242. ***Vodafone*** said its understanding is that adjudications started under Code 14 will be concluded under the processes introduced by the new Code of Practice, but that any findings or imposed sanctions will follow the Code applicable at the time of the breach. It said it does not object to such a procedural transition, provided that compliance takes account of the rules and guidance relevant at the time of any breach.

Level 1 providers

1243. ***Donr Ltd*** said that, in terms of timescales, the PSA should recognise there are three levels to the value chain in Code 15, the network operators, the intermediaries and the merchant. A transition period of three to six months may appear adequate, however in practice each part of the value chain needs to be operational before the next, so the timings appear challenging. It suggested a top-down approach to Code 15 transition. In this scenario, each stage would be three months with the network

operators going first, then the intermediaries, then the merchants (charities). It appreciated this will take marginally longer but believe it would bring about a much more streamlined and robust approach to the start of Code 15.

1244. ***Infomedia*** said that it would be helpful to understand the mapping of old to new Procedures, particularly at the "informal" stage not allocated to track – how informal enquiry or request for information would be mapped to enquiry/warning letters.

1245. ***Mobile Commerce & Other Media Ltd*** said any investigation which was ongoing at the time that Code 15 come into force, should be completed under the procedures of Code 14. It said only new investigations which are launched after Code 15 has been implemented should be subject to the procedures under that Code.

1246. ***One industry respondent*** said that as a matter of both logic and natural justice, it cannot agree to this proposal. It said it is concerned that this essentially means that two different versions of the Code will be existing concurrently and it will be hard to know which needs to be applied at which time.

Trade associations

1247. ***aimm*** said it is surprised and concerned to read of this proposal. It was concerned that some investigations that have lasted longer than required may be being held by the PSA for the purpose of investigating them under the new Code 15 procedures, which could disadvantage those businesses. It said it is wrong to try and "retro fit" ongoing investigations with new process and that this is not fair or proportionate. It said there needs to be visibility of the scope and extent of the impact assessment that has been conducted on this proposal, as well as the legal justification for its presence in the Code. In terms of a transition period, it noted the need for operational and marketing amendments and suggested a minimum of six to nine months, with an optimum period of 12 months.

1248. ***FCS*** agreed with our proposals on commencement and transitional arrangements.

Charities

1249. ***One respondent*** welcomed the PSA's request for stakeholder views on the implementation period for any changes. It noted this would be dependent on the finalised requirements of Code 15 but its preference would be for 12 months to enable it to allocate the necessary resource, spread the costs and make changes to marketing materials in as cost effective way as possible within its standard annual updating process.

1250. ***Macmillan Cancer Support*** felt that a three to six month transition period is insufficient. It said due to the extensive and wide-reaching changes to the PSA Code as outlined in the consultation document, it believes that a 6-12-month transition period would be more appropriate.

1251. ***RSPCA and one other charity respondent*** agreed with our proposals on commencement and transitional arrangements.

Consumers and consumer advocates

1252. ***PSCG*** commented that the transitional arrangements are unclear as to how they will apply to subscriptions still in force at the time of introduction. It noted it frequently gets complaints from consumers who have been unknowingly paying for phone-paid subscription services for a number of years. It argued this would be stopped if the requirement for annual re-opt-in applied to existing subscriptions as well as those initiated under the new Code.

PSA's assessment of inputs received

1253. We note the comments made about the proposed implementation period and, in particular, how long it would take to implement some of the changes which were being proposed. As we mentioned in our consultation document, many of the proposed new Standards and Requirements under Code 15 are not new but rather have been brought into the Code 15 from special conditions or guidance under Code 14. In other cases, we consider that they represent what responsible providers are already doing.

1254. We also note that the strongest pushback in relation to our Code 15 proposals was in relation to our proposed 12 months re-opt Requirement. We have decided not to do this. Accordingly, and taking all of this into account, we are not persuaded that the final set of changes, required under Code 15, would require more than six months to implement.

1255. We also note the concerns expressed around the commencement and transitional arrangements although we also note that what we proposed in the consultation document are the same arrangements as have been used for previous changes from one Code to another and as such this is not a new approach.

1256. For the avoidance of doubt, it is important to be clear that both the intention of these provisions (which have been carried over from Code 14) and our intended application of them is not to try and "retro fit" ongoing investigations with draft Code 15 processes, as some respondents have suggested. We are satisfied that draft Code paragraph 1.8.2 has been drafted in a very limited way to provide regulatory certainty on how this will apply under the draft Code (again, and to be clear, the wording is identical to the wording from Code 14). It is drafted on the basis that only "Section 5 of the Code and any Procedures published by the PSA" and "paragraph 6.1.1 of the Code [relating to "Directions for information"]" where it is applied in respect of engagement and enforcement under Section five, are relevant in this regard. We have already set out in this document the benefits of the new approach to engagement and enforcement, and we are clear that these should apply to all matters being considered at the point that the finalised Code 15 comes into force. Draft Code paragraph 1.8.2 is clear that other provisions of the Code will not be caught by these arrangements. This also means that in respect of existing subscriptions, as raised by one respondent, the provisions of the Code in force at the time of the relevant harmful or non-compliant event will apply.

Final decision

1257. Having considered stakeholders' responses in terms of implementation period; and commencement and transitional arrangements, we have decided the following:

- in terms of implementation period, we have decided to bring the finalised Code 15 into force, subject to approval by Ofcom under the Communications Act 2003, on **5 April 2022** which we consider would provide sufficient opportunity for industry to implement the necessary changes
- in terms of commencement and transitional arrangements, we are confirming our proposed approach to commencement and transitional arrangements, as set out in the consultation document.

Annex 1: List of published respondents to the consultation document

Action Aid UK

aimm

British Heart Foundation

BT Plc

Cancer Research UK

Chartered Institute of Fundraising

Children with Cancer UK

The Children's Society

Comic Relief

Communications Consumer Panel (CCP) and Advisory Committee for Older and Disabled people (ACOD)

Donr Ltd

FCS

Fonix

Global Media Group Services Limited

Infomedia

InstaGiv

Macmillan Cancer Support

Mobile UK

Mobile Commerce and Other Media Ltd

Open Mobile Global

Phone-paid Services Consumer Group (PSCG)

Poppyscotland

RSM 2000

RSPCA

Save the Children UK

Shelter

St John Ambulance

Telecom2 Ltd

UK Competitive Telecommunications Association (UKCTA)

United Kingdom Committee for UNICEF (UNICEF UK)

Virtual Talk Limited

VM02

Vodafone Ltd

Which?

We received a further eleven responses which are anonymous or confidential.

Annex 2: Glossary

Alternative dispute resolution (ADR) – ways of resolving disputes between consumers and traders that do not involve going to court.

Blue-chip – a company or investment which can be trusted and is not likely to fail.

Coordinated Vulnerability Disclosure Scheme – a scheme established to enable network operators and/or intermediary providers to work cooperatively with security researchers and other relevant persons to find solutions to remove or reduce any risks associated with an identified vulnerability in their services and/or systems. Such a scheme involves the reporting of vulnerabilities to network operators and/or intermediary providers by security researchers, and the coordination and publishing of information about a vulnerability and its resolution. The aims of vulnerability disclosure within such a scheme include ensuring that identified vulnerabilities are addressed in a timely manner; removing or minimising any risks from any identified vulnerabilities; and providing users with sufficient information to evaluate any risks arising from vulnerabilities to their systems.

Direct carrier billing (DCB) – online payment method that allows users to make purchases by charging payments directly to their mobile phone bill, sometimes also referred to as operator billing.

Information, Connection and/or Signposting Services (ICSS) – premium rate services, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services.

Interactive Voice Response (IVR) – automated telephony system that interacts with callers, gathers information and routes calls to the appropriate recipients.

Level 1 or intermediary provider – the person who provides a platform which, through arrangements made with a network operator or another intermediary provider, enables the relevant PRS to be accessed by a consumer or provides any other technical service which facilitates the provision of the relevant PRS.

Level 2 or merchant provider – the person who controls or is responsible for the operation, content and promotion of the relevant PRS and/or the use of any facility within the PRS.

Mobile Network Operator (MNO) – a provider that operates a cellular mobile network.

Mobile Station International Subscriber Directory Number (MSISDN) – the telephone number assigned to the SIM card in a mobile phone.

Multi-factor authentication (MFA) – an authentication method that requires two or more verification factors to establish consent.

NCSC Approved List – the National Cyber Security Centre (NCSC) website has a list of products and services that have been independently assessed against NCSC Standards.

Net promotor score – an index ranging from -100 to 100 that measures the willingness of customers to recommend a company's products or services to others.

PayForIt – this was a mobile payment scheme which was originally set up by EE, O2, Three and Vodafone, and which ended in 2019. The scheme included a 120-day rule under which subscription services should be automatically cancelled after a 120-day period of inactivity.

PSD2/Revised Payment Services Directive – the EU legislation which sets regulatory Requirements for firms that provide payment services.

SME – a small to medium-sized enterprise, typically a company with no more than 500 employees

Two-factor authentication – an authentication method that requires two verification factors to establish consent.

Vulnerable consumer – a consumer who is less likely to be able to make fully informed or rational decisions due to a specific characteristic circumstance or need and may be likely to suffer detriment as a result.

Annex 3: The PSA Code of Practice (15th Edition) [final]

The PSA Code of Practice can be found on the PSA website here.

Phone-paid Services Authority

The UK regulator for content, goods and services charged to a phone bill

www.psauthority.org.uk